

Decision 98-03-072 March 26, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Proposed Policies Governing Restructuring
California's Electric Services Industry and Reforming
Regulation.

R.94-04-031
(Filed April 20, 1994)

Order Instituting Investigation on the Commission's
Proposed Policies Governing Restructuring
California's Electric Services Industry and Reforming
Regulation.

I.94-04-032
(Filed April 20, 1994)

OPINION REGARDING CONSUMER PROTECTION

I. Summary

This decision addresses the consumer protection issues associated with direct access. Although our prior Commission decisions addressed some of the issues facing consumers in a restructured electricity market, today's decision focuses on the consumer protection safeguards that were added by Senate Bill (SB) 477 (Stats. 1997, ch. 275), and the consumer protection issues that were raised in connection with the Direct Access Working Group (DAWG) reports.

Among other things, SB 477 requires that all electric service providers (ESPs) offering electrical services to residential or small commercial customers provide “proof of financial viability” and “proof of technical and operational ability” as a precondition to registration under Section 394.¹ SB 477 directed the Commission to develop uniform standards to determine these items. In accordance with Section 394(a)(9) and (10), we have developed the proposed standards in this decision as a result of comments from some of the parties. Through this decision, the proposed standards are being issued for public comment. Interested persons may file opening comments on the proposed standards within 20 days from today, and reply comments within 35 days.

In the interest of protecting consumers from unfair or abusive marketing practices that may occur before permanent standards are adopted, this decision adopts interim standards that registered ESPs must meet. These interim standards are based on the proposed standards and earlier actions taken by Commission staff. These interim standards include:

- (1) Effective immediately, all ESPs offering services to residential and small commercial customers must have an executed service agreement with each utility distribution company (UDC) in whose service territory the ESP is offering services. If an ESP does not have a signed UDC-ESP service agreement, the ESP is prohibited from marketing,

¹ All code section references are to the Public Utilities Code unless otherwise stated.

advertising, or otherwise offering for sale any electric services to residential and small commercial customers in California.

- (2) All prospective ESP applicants are required to enter into a UDC-ESP service agreement before applying to register as an ESP.
- (3) The ESP registration application form shall require all ESPs to name their key personnel involved in the technical and operational aspects of the business and to provide a description of each key person's experience. All existing registered ESPs will be required to complete this as part of their supplemental registration information filing.
- (4) Any ESP who has signed up or initiated a direct access service request on behalf of a customer is required to post a \$25,000 security deposit or financial guarantee bond with the Commission. In the alternative, a customer trust account in that amount may be opened.
- (5) Each registered ESP is required to submit a copy of its Section 394.5 notice.
- (6) Each registered ESP is required to submit a copy of all of its scheduling coordinator (SC) agreements or declarations from its SCs when the ESP signs up its first customer, or if currently registered, when the supplemental registration information filing is submitted. This provision is waived if the ESP can provide proof that it has been authorized by the California Independent System Operator (ISO) to be a SC.

Both the interim standards and the proposed standards are designed to capture the information and qualifications that relate to an ESP's financial viability and technical and operational ability.

The decision also covers a number of other consumer protection issues. The ESP registration application form has been redesigned to seek additional information regarding financial, technical, and operational abilities. All currently registered ESPs will be required to supplement their registration information by completing the ESP registration application form, attached hereto as Appendix A, and submitting all of the required attachments. The ESPs will also be required to file a standard service plan on a regular basis, together with the printed marketing information describing such plans that are delivered to customers in the normal course of solicitation. Appendix B is the information that must be supplied as part of this submission.

Today's decision also describes what the Section 394.5 notice must contain and what the notice should contain. In recognition of the new pricing plans being developed in the marketplace, the Commission will permit the price to be expressed on a cents-per-kilowatthour (kWh) basis or as a discount off the Power Exchange (PX)² price or as an adder to the PX price. The recommended notice that we have developed and attached as Appendix C meets the requirements of Section 394.5. The registered ESPs will be required to submit their Section 394.5 notices as part of the standard service plan filing.

To assist customers in evaluating ESPs, the Consumer Services Division (CSD) shall track the number of customer complaints that have been submitted or filed against ESPs. The Commission's web site also carries a listing of registered ESPs and those ESPs whose registrations have been suspended, cancelled or revoked. The list will be expanded to include those electrical corporations and public agencies who want to be included on the list of ESPs.

CSD will also take steps to ensure that the list of customers who do not want to be disturbed by telephone will only be used for that purpose. As for the development of the "opt-in" list for those customers who want to be contacted by ESPs, the Energy Division will first determine whether there is a demand for this kind of information.

A standard bill format for both registered ESPs and electrical corporations is adopted. This format will provide the customer with needed information and allow the customer to recalculate the bill for accuracy.

This decision also explains the complaint procedures available to consumers should they have complaints against an ESP. In addition, we explain the procedures that the Commission will follow for denying an ESP registration, and for suspending or revoking an ESP's registration.

² Our use of the term "Power Exchange" includes the PX established by Assembly Bill (AB) 1890 and any other exchange that offers electric power at a published price.

Pursuant to Section 394.3(b), the Executive Director shall assign staff to determine the costs of administering the ESP registration program and the costs of all consumer protection activities related to the provisioning of direct access by registered ESPs. This required fee will be imposed on all registered ESPs beginning on September 1, 1998, and on an annual basis thereafter.

As part of the Commission's proactive outreach efforts, the CSD will be developing consumer advisories to inform the public about their rights as consumers and how they can exercise them. Public alerts may also be issued from time-to-time by CSD, in consultation with the Commissioners assigned to direct access, to advise the public about possible problems regarding the marketing and sales of electricity. In addition, the Office of Ratepayer Advocates (ORA) will be submitting its recommendations as to how it can prepare information guides and other tools so that consumers can evaluate different service providers. We also propose for comment that ORA be responsible for evaluating and summarizing various service offerings, and that ORA develop a matrix to enable consumers to compare service offerings.

We also propose in Section XI.E that the UDCs be required to maintain a record of all incoming calls to their service centers which pertain to complaints against ESPs. Parties may file opening and reply comments regarding this proposal.

Since all of these consumer protection rules and procedures affect all ESPs, a ruling will issue notifying all registered ESPs of this decision. In addition, the Energy Division staff will undertake efforts to inform all registered ESPs of their obligations under this decision, as well as other statutory and regulatory requirements.

All of the above efforts, together with the other direct access rules and tariffs that we have adopted previously, form the foundation for ensuring that end-use customers are protected from unscrupulous ESPs. Should it be necessary, we will use the rules and procedures that we adopt today to take swift action against any ESP who violates any Commission decision or statute regarding the provisioning of electricity in California.

Today's decision also makes some slight modifications to Decision (D.) 97-05-040.

II. Background

The Commission has recognized that with the deregulation of the electric industry the role of this Commission would shift. In this new environment, there will be a need to “continue and expand our role of providing protection, safety and information to consumers, and to provide a forum for resolution of complaints about all aspects of electric service.” (D.96-03-022, p. 24.) The Commission stated in D.96-03-022 at page 25 that consumer protection guidelines and rules for new entrants and potential direct access providers should be established “to ensure that high quality, reliable, and environmentally sensitive service continues to be provided to California electric customers.”

Assembly Bill (AB) 1890 added Article 12 of Chapter 2.3 of Division 1, Part 1 to the Public Utilities Code. (Stats. 1996, ch. 854.) Article 12 is entitled “Consumer Protection” and contained three new code sections, Sections 394, 395, and 396. The registration and notification provisions of subdivisions (a) and (b) of Section 394 and the right-to-cancel provision of Section 395 were previously addressed in our second interim decision on direct access, D.97-05-040.

SB 477, which was enacted into law as Chapter 275 of the Statutes of 1997, amended Article 12. Among other changes, SB 477 repealed Section 394 and amended Section 396. SB 477 also added Sections 394, 394.1, 394.2, 394.25, 394.27, 394.3, 394.4, 394.5, 394.6, 394.7, 394.8, and 394.9 to Article 12.

The Customer Education Program (CEP), which we approved in D.97-03-069, D.97-08-063, and D.97-08-064, is an integral part of our consumer protection strategy. As we noted in D.97-03-069, one of the purposes of the CEP is to “provide customers with the information necessary to help them make appropriate choices as to their electric service.” (Former P.U. Code Section 392(d); D.97-03-069, p. 7.) By providing consumers with sufficient and reliable information, consumers will be able to compare and select among the products and services offered in the restructured electricity market. (Former P.U. Code Section 391(g)(1); D.97-03-069, pp. 6-7; D.96-03-022, p. 25.)

Another part of our consumer protection strategy is to develop consumer protection guidelines and rules. As pointed out in the DAWG August 30, 1996 report

entitled “Design and Implementation of Direct Access Programs” (hereinafter, “August 30, 1996 DAWG Report”), consumer protection activities are made up of two categories: (1) design of market rules to minimize the conflict and potential for problems, and (2) mechanisms to resolve customer disputes and redress for market problems. The Legislature noted in Section 391:³

“The Legislature finds and declares all of the following:

- (a) Electricity is essential to the health, safety, and economic well-being of all California consumers.
- (b) The restructuring of the electric industry will create a new electricity market with new marketers and sellers offering new goods and services, many of which may not be readily evaluated by the average consumer.
- (c) It is important that these customers be protected from unfair marketing practices and that market participants demonstrate their creditworthiness and technical expertise in order to engage in power sales to these members of the public.
- (f) It is appropriate to create a system of registration and consumer protection for the electric industry, designed to ensure sufficient protection for residential and small commercial consumers while simplifying entry into the market for responsible entities serving larger, more sophisticated customers.
- (g) It is the intent of the Legislature that:
 - (1) Electricity consumers be provided with sufficient and reliable information to be able to compare and select among products and services provided in the electricity market.
 - (2) Consumers be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive.
 - (3) Pursuant to the authority granted to the commission in this part as to registration and consumer protection matters, the commission shall balance the need to maximize competition by reducing barriers to entry into the small retail electricity procurement market with the need to protect small consumers against deceptive,

³ Some of the provisions found in Section 391 were originally contained in Section 392 as added by AB 1890. SB 477 subsequently repealed Section 392.

unfair, or abusive business practices, or insolvency of the entity offering retail electric service.”

The Legislature also provided in Section 394.4(h) that the Commission “may adopt additional residential and small commercial consumer protection standards which are in the public interest.”

In addition to the legislative directives concerning consumer protection, many of the consumer protection issues were raised in Chapter 12 of the August 30, 1996 DAWG Report. Opening and reply comments to the August 30, 1996 DAWG Report were filed on September 30 and October 15, 1996, respectively.

On October 30, 1996, the DAWG submitted its “Direct Access Working Group Report On Consumer Protection and Education Report In A Restructured Electric Industry In Response To May 17, 1996 Joint Assigned Commissioners’ Ruling” (October 30, 1996 DAWG Report). Opening and reply comments to the October 30, 1996 DAWG Report were filed on November 26 and December 11, 1996, respectively.

Many of the consumer protection issues that were raised in the two DAWG Reports and by the parties in their comments have been addressed in SB 477. Due to the statutory changes to Article 12, we discuss our interpretation of those statutes rather than discussing the pros and cons of each party’s view on a particular consumer protection issue. Other consumer protection concerns that were raised by the parties, but not addressed in SB 477, are discussed later in this decision.

Due to the importance of the consumer protection rules and procedures, the forerunner to today’s decision, the “Draft Decision of ALJ Wong” (draft decision), was mailed to the electric restructuring service list on March 6, 1998 along with a ruling from Commissioner Jessie J. Knight, Jr. inviting interested parties to file comments on the ALJ’s draft decision.

A number of different parties filed or submitted comments on the draft decision. On March 18, 1998, Commonwealth Energy Corporation (Commonwealth) filed a petition to intervene in the proceeding along with its comments. Since Commonwealth has previously registered with the Commission as an ESP, our actions today have a

direct impact on Commonwealth. Accordingly, we will grant Commonwealth's petition to intervene.

On March 18, 1998, The Utility Reform Network (TURN) and the Utility Consumers Action Network (UCAN) timely filed joint comments on the draft decision. In a motion dated March 19, 1998, UCAN seeks leave to late file additional comments. UCAN stated that a number of points that it thought were to be incorporated into the joint comments had been omitted due to time constraints. We will grant UCAN's motion and direct the Docket Office to file the "Comments of UCAN On [sic] Proposed Decision On Consumer Protection Rules" on the date such comments were received by the Docket Office.

We have reviewed all of the various comments and have made changes to those sections of this decision that we believe are warranted.

III. Consumer Protection In General

In D.97-05-040 the Commission stated that it would defer to a future decision whether a specific code of conduct should be imposed on the ESPs. (D.97-05-040, pp. 54, 57-58.) The term "code of conduct" was first raised in the two DAWG reports and the comments to those reports. In today's decision we decline to adopt a code of conduct, but rather adopt specific rules and procedures regarding ESPs and the protection of consumers in accordance with SB 477.

The rules and procedures that we adopt today are closely tied to the protection of customers. In developing consumer protection rules, we need to achieve a balance between the Commission's mandate to protect consumers and the need to refrain from imposing burdensome rules and regulations which might interfere with the efficient operations of a competitive market. These competing interests are set forth in Section 391, as cited earlier, and in Section 394(e) as added by SB 477. Section 394(e) provides:

"Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by registered entities. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by registered entities."

Thus, we must refrain from imposing terms and conditions of service on registered ESPs, while at the same time ensuring that consumers are protected from unfair or abusive marketing practices.

The parties' comments regarding the extent to which consumer protection rules should be imposed fall into three general categories. At one end is the call for a comprehensive set of rules to ensure that consumers are protected from market uncertainties and from potential unfair and fraudulent trade practices. The suggested elements that make up this set of comprehensive rules are the following: effective procedures for the registration of ESPs; a comprehensive program to provide necessary consumer education; and effective enforcement and consumer redress procedures. At the other end of the spectrum is the call for very limited oversight. These parties believe that the Commission should refrain from imposing any onerous regulations or fees on potential ESPs. In between is the call for some oversight which relies on the existing laws and procedures, and the need for customer education.

We believe that the Commission's consumer protection efforts should not be so burdensome as to create barriers to the introduction of new and creative products and services. Nor should the consumer protection efforts impose additional rules and regulations on an increasingly deregulated market unless such rules and regulations are absolutely necessary to protect consumers. The consumer protection rules and procedures contained in this decision reflect a balanced view of these concerns in light of the statutory provisions contained in AB 1890 and SB 477.

The set of rules and procedures that we adopt touch on a variety of issues that consumers encounter in their day-to-day dealings with ESPs and other market participants. These rules and procedures will ensure that consumers are "provided with mechanisms to protect themselves from marketing practices that are unfair or abusive." (Section 391(g)(2).)

Before discussing the various consumer protection issues, we should note that some of the consumer protection issues have already been addressed in other decisions. D.97-05-040 addressed the registration and notice provisions of former Section 394, service connection and reconnection, and third-party verification of a change in the

service provider. D.97-10-031 addressed the release of customer-specific data and the confidential nature of that information. In D.97-10-087, we addressed procedures for processing direct access service requests (DASRs), meter integrity, and the connection and disconnection of meters. D.97-12-048 also addressed meter integrity issues. D.97-12-090 addressed billing format issues for ESPs. Various rules have already been established in these decisions that implement many of the minimum standards set forth in Section 394.4. To the extent that rules have not yet been adopted for certain of the standards set forth in Section 394.4, those issues, the standards, and the rules implementing those standards are discussed later in this decision.

Since the consumer protection rules in this decision affect the business operations of each ESP and their relationships with their customers, the assigned Administrative Law Judge (ALJ) shall issue a ruling to all ESPs who have registered with the Commission. The ruling shall inform the ESPs of their obligation to abide by the rules set forth in this decision.

IV. Registration-Related Issues

A. Who Must Register As An ESP

We noted in D.97-05-040 that Section 394(a), as added by AB 1890, contemplated:

“that only those entities offering electrical service in the service territories of the electrical corporations subject to our jurisdiction are required to register with the Commission. AB 1890 does not require registration with this Commission of electric service providers offering electrical service in the service territories of the publicly owned electric utility.” (D.97-05-040, pp. 54-55.)

SB 477 repealed Section 394 as added by AB 1890, and eliminated the reference in subdivision (a) of that former section which read that only an “entity offering electrical service to residential and small commercial customers within the service territory of an electrical corporation shall register with the commission.” Section 394(a), as added by SB 477, now reads in pertinent part:

“Each entity offering electrical service to residential and small commercial customers shall register with the commission, unless it is an electrical corporation as defined in Section 218, or a public agency offering electrical service to residential and small commercial customers within its

own political jurisdiction, or within the service territory of a local publicly owned electric utility.”

This change now requires the Commission to register all entities in California who offer electrical service to residential and small commercial customers, except for electrical corporations and public agencies offering such services within their own political jurisdiction or the service territory of a local publicly owned electric utility. Thus, for the service territories of those publicly owned electric utilities whose governing boards have authorized direct access, all entities who plan to offer electrical services to residential and small commercial customers (except as noted) are required to register with the Commission.

Due to this statutory change, the language which appears in D.97-05-040 starting at the last full paragraph at the bottom of page 54 and continuing to the top of page 55, and finding of fact number 66 are no longer correct. However, we have not modified the language in D.97-05-040 because of the impact that the other statutory changes in SB 477 have on other parts of D.97-05-040 which cited statutes which were subsequently changed by SB 477.

We are aware that some ESPs will undertake marketing activities “in-house” with their own employees, while others may contract this function out or establish agency-type relationships. The language of Section 394 that requires “[e]ach entity offering electrical service to residential and small commercial customers” to register with the Commission does not apply to entities which are solely performing marketing functions on behalf of a registered ESP. Although these kinds of marketing entities need not register as an ESP, each registered ESP who uses such entities shall be required to ensure that the marketing entity: (1) clearly advises all customers contacted by the marketing entity that the entity is marketing on behalf of the ESP; (2) provides each customer contacted by the marketing entity with the ESP’s registration number; and (3) complies with all applicable laws, decisions and orders of the Commission. Such requirements are appropriate to ensure that consumers are provided with mechanisms to protect themselves from unfair or abusive marketing practices. (See PU

Code Sections 391(g)(2) and 394.4(h.) Should any of these marketing entities violate any of these provisions, we will hold the ESP accountable.

B. General Registration Requirements

SB 477 made several changes to the ESP registration requirements as enacted by AB 1890 and adopted in D.97-05-040.

In D.97-05-040 at page 59, we stated that an ESP “registrant shall be obligated to inform the Commission in writing within 30 days of any changes to the registration form.” Section 394.1(d), which was added by SB 477, requires that the registered ESPs update the ESP registration information required by paragraphs (1) to (10) of Section 394(a) within 60 days if there is any material change in the information that was previously provided. Any material changes to any other information required by Article 12 of Chapter 2.3 of the Public Utilities Act (P.U. Code Section 394 et seq.) are to be updated annually. Due to this statutory change, ordering paragraph 5.i.(1) and the text at page 59 of D.97-05-040 need to be changed to reflect the 60-day revision period.

Based on Section 396(d) in AB 1890,⁴ the Commission stated in D.97-05-040 at page 59 that the ESP “registration requirement shall terminate on January 1, 2002, unless extended by a later enacted statute.” SB 477 amended Section 396 by deleting the January 1, 2002 termination date. Thus, the ESP registration requirement and the other consumer protection safeguards in Article 12 of Chapter 2.3 of the Public Utilities Act are to continue indefinitely. Page 59 and ordering paragraph 5.i.(4) of D.97-05-040 need to be modified to reflect this change.

We will make the above changes as part of the ordering paragraphs of this decision.

⁴ Section 396(d) as added by AB 1890 states: “This article [Article 12. Consumer Protection] shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.”

C. Changes To The Registration Form

A number of changes have been made to the ESP registration application form as a result of the statutory changes and the staff's ongoing experience with the registration process. A copy of the revised ESP registration application form is attached to this decision as Appendix A. The changes made as a result of Section 394(a)(9) and (10) are discussed in the following section.

The ESP registration application form was initially adopted in D.97-05-040. That form was based on the requirements of former Section 394(a) as added by AB 1890. Former Section 394(a) only required that the registrant provide its legal name, current telephone number, current address, and the agent for service of process. In addition to those four items, the Commission approved the use of an ESP form that required the registrant to provide answers to a series of other pertinent inquiries, and required the registrant to verify the form under penalty of perjury. (D.97-05-040, pp.57-59.)

The Commission stated in D.97-05-040 that the Legislature was "also considering some other bills which would require registrants to disclose other items on the registration form." In recognition of that, the Commission stated: "Should these additional items be added in the future, the Commission may require registrants to supplement or update their registration form." (D.97-05-040, p. 59.) In adopting the ESP registration process set forth in former Section 394, the Commission ordered that all registered ESPs "shall abide by whatever consumer protection rules the Commission may adopt in the future." (*Id.*, at p. 95.)

The Legislature subsequently passed SB 477, which was approved by the Governor on August 15, 1997. That legislation, which had immediate effect, repealed Section 394 as added by AB 1890, and added a new Section 394. Section 394(a) requires that as a precondition to registration, that the registrant provide the following:

- "(1) Legal name and any other names under which the entity is doing business in California.
- "(2) Current telephone number.
- "(3) Current address.

- “(4) Agent for service of process.
- “(5) State and date of incorporation, if any.
- “(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.
- “(7) Brief description of the nature of the service being provided.
- “(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any officer or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any officer or director of the company.
- “(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than March 31, 1998. In determining the financial viability of the entity, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatt hours of electricity it expects to provide, and any other appropriate criteria in order to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.
- “(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than March 31, 1998.”⁵

In recognition of the SB 477 changes, the ESP registration application form was revised and ALJ Wong issued a ruling on November 7, 1997, informing all ESPs registered as of that date, of the revised form. The revised form was attached to the ruling. All registered ESPs were given until December 15, 1997 to supplement their original filing by submitting a completed revised application form.

⁵ Proof of financial viability, and proof of technical and operational ability, are discussed in the section which follows.

As a result of the staff's experience with the ESP registration process, and the interim standards that we adopt regarding financial viability, and technical and operational ability, we have made further revisions to the ESP registration application form, as shown in Appendix A. These revisions are discussed below.

We have renamed the registration application form to make it consistent with our references to ESPs rather than to "non-utility service providers."

On line number one, we have consolidated the requests regarding the use of fictitious business names. All ESPs who are using a fictitious business name will be required to provide proof that they have made the appropriate filings required by law.

Line numbers 2 and 11 have been revised to reflect possible differences between the ESP's mailing address and the ESP's physical street location of the business. Some ESPs may be using a mailing address only, such as a post office box address. If a post office box or some other mailing address is used, we will require that a street address also be supplied. It is important that the Commission have both addresses in case problems arise with an ESP.

Line number four of the form has been revised to reflect that "other" forms of entities can register, and that a governmental entity can register as well. Additional line items have been added to the registration form for the "other" and "government entity" categories. These line items seek information about the type of entity, and the officers or managers of these kinds of entities.

For line number five, registrants who are a not California corporations, limited liability companies, or limited partnerships, will be required to attach a copy of the certificate from the California Secretary of State which permits the entity to transact business in California.

Line 11 requires corporate registrants to disclose all persons or entities that own, control, or hold ten percent or more of the outstanding voting securities of the registrant. Line 12 requires all registrants to disclose all affiliated entities of the registrant. A definition of "affiliate" is provided in the "Notice" section of Appendix A. That definition is based upon the definition of an affiliate that is contained in the affiliate transaction decision, D.97-12-088. Disclosure of ownership and affiliates will

enhance the Commission's ability to determine technical and financial viability, monitor concentration of market power, and avoid entry into the market of suspect entities or persons.

Line number 14 has been revised to obtain more information about the ESP, the type of customer class being served and the geographic area that the ESP plans to serve.⁶ Line number 14.e. and 14.f reflect the requirements of Section 394(a)(9).

Line number 15 reflects the proof of technical and operational ability as required in Section 394(a)(10), as well as proof of financial ability, as discussed in the next section. Line number 16 solicits additional proof of technical and operational ability by requiring information about the relevant work experience of key personnel and of the other companies who may be performing metering or billing services on the ESP's behalf. Line number 17 is also designed to capture information that reflects on the ESP's technical, operational, and financial capabilities.

Line number 20 has been separated into two distinct parts. The two parts conform to the requirement set forth in Section 394(a)(8).

We have also added a notice to the registration application form that informs prospective ESPs of some of the requirements that all registered ESPs must abide by. In addition, we have refined the declaration to ensure that the ESP has read the notice, and that all of the information submitted in connection with the ESP application is true and correct.

As noted above, Section 394(a)(8) requires that the registrant disclose any criminal convictions having to do with consumer protection law or regulation within the 10 years immediately prior to registration, and any felony convictions of any kind, against the company or any of its officers or directors. Section 394.1(c) provides that the Commission may deny an ESP application for registration if the applicants or their officers or directors have any such criminal convictions or for failure to disclose them.

⁶ This line number was originally added to the registration form by the November 7, 1997 ALJ ruling in response to the revisions made to Section 394 by SB 477.

In order to enable the background checks contemplated by the legislation and verify the accuracy of information supplied by registrants, we will require all ESPs to provide to the Commission a full set of fingerprints of their directors and officers. The fingerprints will be submitted to the Department of Justice for that agency to conduct a state summary criminal history check, and to forward to the Federal Bureau of Investigation for a national criminal history record check. This information will be treated as highly confidential. The Executive Director shall develop internal safeguards to protect the confidential nature of this material and protect the individuals' privacy.

We conclude that the revised form provides the necessary information required by Section 394, and that the format of the form is consistent with our authority in Section 394.4(h) to adopt additional consumer protection standards. Effective today, all prospective ESP registrants shall use the revised registration application form set forth in Appendix A. In order to facilitate background checks, we will also require all ESPs to submit the original and three copies of the completed registration application form and all required information.

All ESPs who have previously received an ESP registration number shall be required to complete the revised registration application form and submit all required documents to the Energy Division. These registered ESPs will not be required to submit another \$100 registration fee with their revised forms. All registered ESPs shall be required to update the information within 90 days from today.⁷ The failure of an ESP to submit the revised form together with the required information will lead to a suspension of the ESP's registration 100 days from today. The Energy Division shall be responsible for monitoring the compliance of the ESPs. Should any ESP fail to comply within the time allotted, the Energy Division shall take the necessary steps to suspend

⁷ Alternatively, a previously registered ESP may choose to be placed on inactive status as described in Section IV.F.4 or it may request that its ESP registration be cancelled as discussed in Section IV.D.5.

the ESP.⁸ In 100 days from today, the Energy Division shall also inform the UDCs of the status of these ESPs. This is necessary so that the UDCs are aware of which ESPs are in full compliance with the registration requirements adopted in this decision. The ALJ ruling that is to be sent to all registered ESPs shall inform the ESPs of the above requirements.

D. Financial Viability And Technical And Operational Ability

1. Introduction

As noted above, SB 477 revised the type of information that each ESP must submit in order to be registered by the Commission as an ESP. Two of the new requirements are proof of financial viability and proof of technical and operational ability. These requirements are found in Section 394(a)(9) and (10).

SB 477 did not prescribe uniform standards for determining an ESP's financial viability or technical and operational capabilities. Instead, SB 477 directed the Commission to develop uniform standards and to "publish those standards for public comment no later than March 31, 1998." In accordance with that directive, the November 7, 1997 ALJ ruling invited interested parties to file written comments on what type of standards and criteria the Commission should adopt as proof of a registrant's financial viability and technical and operational ability. Comments were filed by the CEC, Enron, PG&E, ORA, and Edison.

Parties had a further opportunity to comment on the proof of financial, technical and operational capabilities when the draft decision was mailed on March 6, 1998. Sections IV.D.3, 4 and 5 incorporate some of those comments. Pursuant to Section 394(a)(9) and (10), the public will have another opportunity to comment on the proposed final standards that are set forth in Section IV.D.4.

⁸ Since the registration process is an exercise of the Commission's licensing function, any non-compliance with the registration requirement could lead to a suspension of an ESP's registration number by the Energy Division until such time the ESP has complied with the registration requirements. (See Section IV.F.3.)

2. Comments On Criteria

The CEC proposes a two-stage registration process.⁹ The first stage, which the CEC refers to as provisional registration, would require the ESP to satisfy all registration requirements except for a demonstration of the ESP's technical and operational ability. The provisional registration stage would allow ESPs to market to end-use customers and to enter into contingent direct access arrangements.

For the first stage, the ESP would have to show proof of its financial viability. The CEC believes two concerns were expressed in Section 394(a)(9), adequate capitalization and recourse for customers damaged as a result of fraud. The CEC contends that an ESP's level of capitalization should be commensurate with the cash flow needed to do business as an ESP. If the ESP is insufficiently capitalized, it won't be able to provide the resources necessary to function as an ESP. Rather than developing a new capitalization requirement, the CEC recommends that the Commission use the creditworthiness requirements that have already been authorized in D.97-10-087. Those requirements are contained in Section S of the UDCs' direct access tariffs which were appended to that decision as Appendix A. Thus, to prove financial viability, the prospective ESP would have to satisfy the creditworthiness standard of a single UDC by submitting a copy of the signed service agreement.

In order to protect consumers from fraud, the CEC recommends that the ESPs be required to post a bond of between \$200,000 and \$1 million, depending on the number of customers and the number of kWhs served. The CEC envisions that this bond will be used to compensate customers who have been damaged as a result of an ESP's misconduct.

After the ESP receives its provisional registration, the CEC proposes that the ESP be given a limited period, such as 90 days, to complete the second stage. The second stage would require the ESP to demonstrate its technical and operational ability. The CEC proposes that this demonstration consist of two elements. First, the ESP would

⁹ Commissioner Michal C. Moore of the CEC dissented from the CEC's comments.

be required to have a signed service agreement with a UDC, and with any scheduling coordinator (SC) or other service provider it intends to utilize. After the submission of these agreements, the second element would be a demonstration of the ESP's abilities through operational interface testing. The CEC proposes that if the testing is successful, then the ESP could become fully registered and could begin to serve customers as soon as its DASRs are processed.

As part of the ESP's demonstration of technical and operational ability, the CEC also recommends that the ESP provide evidence of its computer processing capabilities. The CEC believes that this evidence should consist of the following: a statement of who the key staff resources are and what experience they have with processing large volumes of customer account data; a description of the ESP's computer processing capabilities; and a description of the electronic data exchange capabilities with other market participants. The CEC also recommends that an ESP provide evidence that it has sufficient customer service personnel to answer telephone inquiries for the scale of operations that it anticipates.

Enron proposes that those ESPs who have been authorized by the Independent System Operator (ISO) to act as SCs in California be deemed to have the necessary financial viability and technical and operational ability. Enron points out that the ISO has in place an extensive process for screening SCs. The ISO requires the SC to have an approved credit rating, or a financial guarantee must be posted. The ISO tariff also requires SCs to have specified computer software, and testing and auditing of relevant communication and instrument systems. Enron asserts that the activities of a SC at the ISO level are comparable to, if not greater than, the financial magnitude and technical complexity required of ESPs. In Enron's opinion, allowing an ESP to be deemed qualified by virtue of its authorized status as an SC will "conserve resources, reduce administrative burdens on market entrants and streamline the entry for new competitors into the California electric market."

ORA states that an ESP's collection of funds from customers may pose a financial risk to customers if the ESP fails or if an ESP takes the money without providing any services in return. In order to ensure that "residential and small

commercial customers have adequate recourse in the event of fraud or nonperformance,” ORA believes that the ESP must show proof of financial viability. ORA proposes that this proof can be demonstrated in one of three ways. The first method is to have the ESP provide documentation showing a credit evaluation from Moody’s of “Baa2” or higher, or an evaluation from Standard and Poor’s, Fitch, or Duff and Phelps of “BBB” or higher. ORA states that this first method is identical to what is contained in Appendix A of D.97-10-087.

The second method is to have an ESP provide a security deposit that is sufficient to cover one half of the expected sales price of the kWhs that the ESP forecasts it will sell to small customers over a 12 month period. ([# of kWhs per month x # of customers x 12 months x price per kWh] divided by 2.)¹⁰ ORA proposes that the security deposit can take the form of a cash deposit, a letter of credit, a surety bond, or a guarantee from a guarantor who has a credit rating of Baa2 or higher from Moody’s or a rating of BBB or higher from Standard and Poor’s, Fitch, or Duff and Phelps.

The third method of proving financial viability is to have the ESP procure a financial guarantee bond. The financial guarantee bond is to be at a level sufficient to provide adequate recourse for customers in the event of fraud or nonperformance. ORA states that the bond amount could be based upon sales volume and any amounts that the ESP collects by way of deposits or advance payments.

On the proof of technical and operational ability, ORA recommends that the Commission focus on the capabilities that ESPs need in order to interact with customers, the UDCs, and other market participants in a timely and efficient manner. ORA states that in order to transact business, the ESP must have a signed service agreement with a UDC and an agreement with a scheduling coordinator. ORA recommends that the Commission require an affirmative declaration from the

¹⁰ ORA uses the following example: forecasted average sales of 500 kWh per month at an average of three cents per kWh for 1000 customers. In that example, the deposit would amount to \$90,000.

registering ESP that it has signed such an agreement. The declaration could be submitted when the ESP first registers or at the time of any required update, or within three months after registering with the Commission. ORA also recommends that if an ESP intends to act as its own SC, the ESP must declare that it has signed a service agreement with the ISO.

ORA also proposes that as another condition of registration, the ESPs provide the Section 394.5 notice to the Commission. In addition, ORA's comments mention the marketing of environmentally friendly power, bill formatting issues, and the use of electronic data interchange (EDI) standards for transferring documents by electronic means. All of these issues are discussed later in this decision except for the EDI standards. The EDI standards are an issue that should be addressed in any followup efforts regarding retail settlements and information flow.

With respect to proof of financial viability, PG&E proposes that, at a minimum, the standards should ensure that in the event the ESP goes out of business, customers would have any deposits or pre-payments returned. The standards should also ensure that an ESP is capable of discharging any other liabilities that it may have to its customers.

PG&E proposes that there should be multiple ways in which an ESP can satisfy the financial requirements. An ESP registrant should be allowed to demonstrate either bonding or insurance coverage in an amount sufficient to cover some reasonable level of exposure to customers in the event of the ESP's default. The coverage should be based on the number of customers the ESP expects to serve, and the number of kWhs of electricity that the ESP expects to provide. An alternative to the bonding or insurance is if the ESP can show that it has been approved by the UDC under the creditworthiness standards imposed by D.97-10-087.

If an ESP cannot demonstrate financial viability, PG&E suggests as a third option that the ESP be given a provisional registration, but be required to disclose to all potential customers in writing that it has not demonstrated financial viability according to Commission standards. Such a notice should alert potential customers to the potential for uncompensated harm if the ESP goes out of business.

Regarding the requirement of proof of technical and operational ability, PG&E questions whether the standard should apply only to the ESP's ability to provide electricity, or if it should apply to other services such as metering and billing. PG&E points out that the Commission has already established technical standards that govern an ESP's ability to engage in direct access and related services. PG&E does not believe that the registration standards should duplicate those other standards. Instead, the registration standard should focus on the ESP's capacity to provide electric supply.

PG&E states that in order to provide electric supply, an ESP will need to have certain contractual arrangements, regulatory approvals and business processes in place. PG&E points out that some ESPs may have legitimate reasons for not finalizing some of these arrangements until after the ESP has secured a customer base. At a minimum, PG&E believes that the ESP should affirm under penalty of perjury that it has or will have all of the necessary regulatory approvals to provide power to its customers, should provide the name of the SC, and should furnish customer service information.

PG&E states that in developing the standards for operational and technical ability, the Commission should recognize that the potential harm to consumers from an ESP's failure to perform will be monetary. The UDC or another ESP will take over service to the customer should the ESP fail. Thus, strong financial viability requirements can reduce the need for procedures and requirements for examining an ESP's operational capability.

Edison proposes a provisional registration process, followed by a later review of the ESP's operations, customer complaints, and compliance capabilities. Edison proposes that the provisional registration period last for six months. During that period, the Commission would review the ESP's technical and operational capabilities, as well as the number of complaints against the ESP. If no problems are detected during that review process, the ESP would be issued full registration at the end of the review process.

In order to obtain provisional registration, Edison would require the ESP to prove its financial viability. Edison proposes that the ESP be required to demonstrate

that it has been approved by a UDC under the creditworthiness standards imposed in D.97-10-087. The ESP would also be required to prove its technical and operational ability. Edison recommends that this proof consist of all licenses, permits, or other evidence of qualification. This could include such things as a license from the Federal Energy Regulatory Commission to engage in competitive power marketing, contractor's licenses, an SC contract, or contracts pertaining to billing, meter data management or meter service providers.

3. Discussion

We do not favor the provisional registration process suggested by the CEC and Edison. The CEC's proposal would allow an ESP to enter into a contingent direct access arrangement. This creates uncertainty because the customer is put into the position of not knowing whether the ESP it selected will be able to arrange for the delivery of electricity. In this developing market, that kind of uncertainty is not needed. As for Edison's proposal, the Commission can, as discussed in this decision, take action to investigate, suspend or revoke an ESP's registration. There is no need to issue a provisional registration, conduct a subsequent evaluation, and then decide whether to issue a permanent registration number.

We can accomplish the same goals of a provisional registration process by requiring a prospective ESP to meet certain conditions before registering. These conditions would center around the financial viability and the technical and operational ability criteria contained in Section 394(a)(9) and (10). These criteria, to a large extent, are already contained in our direct access decisions. In D.97-05-040, the Commission recognized that procedures would have to be put in place to allow customers to switch from bundled utility service to direct access service, to install meters and develop metering standards, and to address the information flow needed to support the settlement process among all the market participants. In D.97-10-087, the Commission adopted the direct access tariff provisions set forth in Appendix A of that decision. Among other things, that decision set forth the following: the process for how customers are to be switched; how the switch is to be verified; the types of services that ESPs can offer; the standards that the ESPs must meet in order to provide those

services; billing service options and the credit requirements associated with providing billing; and the requirements that the ESP must satisfy before being permitted to provide direct access.

Section D of Appendix A to D.97-10-087, which is entitled “ESP Service Establishment,” lists the following five requirements that the ESP must satisfy before an ESP can provide direct access service in the UDC’s service territory:

- “(1) All ESPs must submit an executed standard Energy Service Provider Agreement (UDC-ESP Service Agreement) in the form attached hereto.¹¹
- “(2) The ESP must warrant to the UDC that the ESP has registered with the CPUC if it intends to serve small customers and has selected an Independent Verification Agent (IVA) for all transactions for which independent verification is required by law.
- “(3) The ESP must satisfy UDC credit-worthiness requirements as specified in Section S, Credit Requirements.
- “(4) The ESP must satisfy applicable CPUC Electronic Data Exchange requirements
- “(5) If the ESP will be offering Consolidated ESP Billing services, Meter Services or MDMA Services, the ESP must demonstrate the ability to perform the functions required by this Rule. The UDC will continue to provide those services until compliance testing has been completed. The ESP’s failure to complete such compliance testing shall not affect its ability to provide electric power to customers.”

All of the parties who commented agree that an ESP will need to enter into a service agreement with the UDC and that the ESP will need to arrange for an SC to schedule the ESP’s loads. The UDC-ESP service agreement, the direct access tariff provisions that the ESP must abide by, and the agreement with an SC, all have requirements which make it necessary for the ESP to have some level of technical and

¹¹ The UDC-ESP Service Agreement was attached to D.97-10-087 as Appendix B.

operational experience in energy transactions. (See D.97-10-087, D.97-12-048, D.97-12-090.)

Requiring an ESP to have a signed UDC-ESP service agreement before it can file an application to register to serve residential and small commercial customers will screen out a large number of entities who lack the needed technical and operational skills to successfully operate as an ESP. Experience in marketing, customer relations, procurement of electricity, metering services, billing, and information exchange are all needed skills that an ESP must have in order to meet its obligations under the service agreement, the direct access tariff provisions, and its relationships with other vendors that the ESP may utilize. In addition, such a requirement will assist in screening out potential ESPs who lack financial resources due to the creditworthiness requirement that a UDC may impose on the ESP if the ESP elects to offer certain kinds of billings options. (D.97-10-087, App. A, Section S.)

We recognize that requiring a UDC-ESP service agreement prior to registration is no guarantee that the ESP is capable of performing. However, this requirement will cause a potential registrant to seriously consider whether it wants to be a registered ESP since the service agreement provides that the ESP “represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirement.” (See D.97-10-087, App. B, Section 2.1.)

Similarly, an ESP’s agreement with an SC also requires some level of technical and operational competence on the part of the ESP. The ESP needs to know what the ESP’s load is at various times of the day, how to procure the electricity in order to satisfy its load, and what procedures it must follow to interface with the SC in order to have the ESP’s purchases transported and delivered to the end-use customer. In addition, the SC must meet certain financial requirements as set by the ISO. These financial requirements are necessary to ensure that the SC is in a position to bear the financial risks arising from the risks from load imbalances. To minimize the SC’s financial exposure for load imbalances that may occur as a result of an ESP’s incorrect forecast of supply or demand, the SC will undoubtedly require the ESPs to meet certain financial requirements of its own.

Requiring an ESP planning to market to residential and small commercial customers to have a signed UDC-ESP service agreement before it is allowed to apply as a registered ESP will help to ensure that the prospective ESP has some technical and operational experience in energy transactions and in business, and that it may have met some financial criteria established by the UDC. An ESP's agreement with an SC will also indicate that the ESP has met the SC's criteria. However, the SC agreement is likely to be lower on the ESP's priority list than signing the UDC-ESP service agreement. That is because the ESP must execute the UDC-ESP service agreement before an ESP can sign up a customer and submit a DASR on the customer's behalf. (D.97-10-087, App. A, Section D.) Although the ESP must disclose the SC to the UDC as part of the direct access tariff, it is the ability of the ESP to market and sign up customers that dictates whether an SC agreement needs to be signed.

Further proof of an ESP's technical and operational experience could come from a requirement to disclose the names of the key personnel involved in the business and to provide a description, including the time period, of each person's experience in the sale and procurement of energy services or similar products.¹² If the ESP is planning to offer metering or billing related services, a description of each key person's experience with those services would be useful as well. Otherwise, the names of the companies providing the metering and billing services on behalf of the ESP should be disclosed, as well as that company's experience in those areas. Due to the technical and operational issues inherent in the electric industry, an ESP who enters into a service agreement with the UDC needs some level of experience in this field. Requiring that experience to be disclosed on the ESP registration application form will provide an additional check on the ESP's qualifications. If a prospective ESP is able to sign a service agreement with a UDC, but the description of the key personnel reflects

¹² The reference to "key personnel" means those individuals who have the primary responsibility for the day-to-day responsibility for the technical and operational aspects of the business. It is not our intent to have an ESP list every single employee that is involved in these aspects of the business.

that the ESP has little or no experience in the above-described areas, the Energy Division should recommend to the Executive Director that the registration application be denied in accordance with the procedure set forth in Section 394.1.

As ORA points out, additional proof of an ESP's technical and operational ability will come from the development of the Section 394.5 notice, which is discussed later in this decision. In order to develop the notice, the ESP will need to give serious consideration to all of the prices, terms, and conditions of the services that the ESP plans to offer to residential and small commercial customers. Since this notice must be provided to the potential customer prior to the commencement of service, the notice provides additional assurance that the ESP has developed a business and marketing strategy. By requiring that the notice be provided to the Commission at the time the first residential or small commercial customer is signed up, or beforehand, the Commission is made aware of the prices, terms and conditions that the ESP plans to offer. If the prices, terms and conditions are radically different from other competing ESPs, the Energy Division will be in a position to monitor the ESP's activities for any wrongdoing.

The Legislature has directed the Commission to consider "the number of customers the potential registrant expects to serve, the number of kilowatt hours of electricity it expects to provide, and any other appropriate criteria in order to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance." (P.U. Code Section 394(a)(9).) As pointed out by some of the commenting parties, this phrase seems to suggest that the Legislature intended that a mechanism be developed which ensures that customers have some ability to recoup their financial losses should an ESP defraud customers or go out of business. The other purpose behind the financial viability requirement appears to be that the ESP should have sufficient capital to fund its operations.

The credit requirements adopted in Section S of Appendix A of D.97-10-087 were intended to address the creditworthiness of the ESP. The credit requirements were tied to the premise that the ESP should have sufficient funds to pay amounts that might be owed to the UDC where consolidated billing is performed by

the UDC, or where the ESP is responsible for consolidated billing. If the ESP decides to put up a security deposit instead of having a credit evaluation done, the deposit is to be posted with the UDC. A deposit posted with the UDC does not necessarily provide customers with adequate recourse should the ESP fail to provide service.

An appropriate mechanism to ensure that customers have adequate recourse is to require ESPs serving residential and commercial customers to post a security deposit with the Commission. In order to make the restructured electric market available to all different sizes of ESPs, the size of the security deposit should depend on the number of customers.

The CEC and ORA proposed different methods for calculating the size of security deposits. The CEC's proposal appears to be unrelated to the number of customers and kWhs. The ORA method appeared to be a more reasonable method of calculating the size of the security deposit because the size of the security deposit was to match the size of the ESP, and to account for the number of customers and the forecast of kWhs to be sold. The draft decision originally proposed that ORA's method, as explained in Section IV.D.2, be used as the proposed final standard, subject to a minimum deposit of \$25,000. A number of parties pointed out that ORA's method could result in a sizable deposit which would deter new entrants and would amount to an undue burden. In ORA's comments to the draft decision, ORA agreed with the comments of the ESPs. ORA now recommends that ESPs post \$25,000 or if the ESP collects deposits from customers, that a minimum of \$100,000 should be required. ORA also states that the Commission might consider imposing a ceiling on the amount of the required deposit.

The Commission should adopt a requirement that every registered ESP post a minimum security deposit. As the number of customers and the number of kWhs served increase, a higher cash deposit than the minimum security deposit should be required. If the number of customers increases over time or the number of kWhs served increases, as reported in the standard service plan filing, the size of the security deposit could be adjusted when the standard service plan is filed. To avoid an unnecessarily high security deposit, the Commission should cap the security deposit at

some reasonable level that is commensurate with the size of the company and the number of customers served.

Requiring a security deposit shows proof that the ESP registrant is financially viable, and that adequate recourse will be available to residential and small commercial customers in the event of the ESP's fraud or non-performance. This security deposit should apply to all registered ESPs regardless of whether the ESP requires its customer to place a deposit. By scaling the security deposit to the size of the ESP, this will further ensure the financial viability of the ESP, as well as ensuring that there is adequate recourse available.

Several of the parties suggest that in lieu of a security deposit, the ESP be allowed to provide alternatives. These include the following: a credit rating equivalent to what is contained in Section S.(2)(a) of Appendix A of D.97-10-087; a performance or financial guarantee bond; or a guarantee by an entity with a Section S.(2)(a) credit rating. Enron also suggests that an ESP who has been authorized by the ISO to act as a SC be deemed financially qualified. In addition, some of the parties suggest that the ESP be allowed to establish a customer trust account that can only be used under certain circumstances.

In order to ensure that a ready source of money is available to customers in case of the ESP's fraud or nonperformance, the Commission should require that all ESPs planning to serve residential or small commercial customers post either a cash security deposit or a financial guarantee bond with the Commission in the amount required. In the alternative, an ESP should be permitted to open a customer trust account in a format that is agreeable to the Legal Division and which ensures that adequate recourse is available to customers should the ESP fraudulently deceive its customers or fail to perform. Although proof of a credit rating that meets the Section S.(2)(a) standards would provide some assurances that the ESP is solvent, the credit rating does not guarantee that a source of funds will be readily available should the ESP act fraudulently or does not perform.

4. Proposed Standards

In accordance with Section 394(a)(9) and (10), the Commission proposes to adopt the following standards for proof of financial viability and proof of technical and operational ability for those ESPs who plan to offer electric services to residential and small commercial customers.

- (1) Before an ESP may apply for an ESP registration number, and for those ESPs who have already received an ESP registration number, the ESPs are required to provide the Energy Division with a signed copy of their UDC-ESP service agreements for each UDC in whose service territory the ESP plans to do business.

We note that this requirement should not result in a “Catch-22” situation where the UDC refuses to enter into a UDC-ESP service agreement unless the ESP has been registered with the Commission. ESPs who do not serve residential and small commercial customers are still required to enter into such an agreement before the ESP can provide direct access service in the UDC’s service territory. (D.97-10-087, App. A, Section D.(1).) Those kinds of ESPs can execute an agreement without having to register with the Commission. Section D.(2) of the direct access tariff does require the ESP to warrant that it has registered with the Commission if the ESP intends to serve small customers and has selected an independent verification agent. However, there is no condition that such an assurance must be provided at the time the UDC-ESP service agreement is entered into. Instead, this warranty may be satisfied anytime before the ESP provides direct access services in the UDC’s service territory. (Id., Section D.)

- (2) Prior to signing up and initiating a DASR request on behalf of any residential or small commercial customer, an ESP will be required to post a minimum cash security deposit (cashier’s check) or financial guarantee bond in the amount of \$25,000¹³ with the Commission. In the alternative, the registered ESP may open a customer trust account

¹³ The \$25,000 amount is a reasonable starting point for a minimum requirement. If the ESP requires its customers to post a deposit, the \$25,000 would represent the deposits of about 167 customers. This is based on the assumption of 167 customers with an average electricity bill of \$50 per month. Since the maximum deposit the ESP can require is three times the monthly bill, the total deposit amounts to approximately \$25,000.

in that amount which is in a format approved by the Commission's General Counsel, and which ensures that residential and small commercial customers have adequate recourse in the event of the ESP's fraud or non-performance. The deposit, bond or trust account shall be established when the Section 394.5 notice is first tendered to the Energy Division.

As the ESP's number of customers increase, the ESP shall be required to increase its security deposit in accordance with the following schedule:

| <u># of Customers</u> | <u>Security Deposit Amount</u> |
|-----------------------|--------------------------------|
| 1 - 250 | \$25,000 |
| 251-500 | \$50,000 |
| 501-1000 | \$75,000 |
| 1001 + | \$100,000 |

The ESP will be required to increase the amount of the deposit, bond or trust account in accordance with the schedule above if the number of customers reported in the standard service plan filing raises the ESP to a different security deposit amount level.

If a cash security deposit is posted with the Commission, any interest earned on the deposit would be returned to the ESP on an annual basis.

- (3) The ESP registration application form shall contain a section which requests the applicant to name the key technical and operational personnel, their titles, and a description, including the time period, of each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the ESP will be doing the metering or billing on behalf of the ESP, the names of the companies providing those services and their experience shall be disclosed as well. If the applicant has been authorized by the California ISO to act as an SC, this requirement is waived. The ESP who has been authorized as an SC shall submit a copy of such authorization as part of the ESP registration application form.
- (4) Each registered ESP is required to submit a copy of its Section 394.5 notice to the Energy Division when the ESP signs up its first customer or when the first standard service plan filing of the ESP is due, whichever is earliest.
- (5) Each ESP is required to submit a copy of all of its SC agreements or a signed declaration from each SC with which it has an agreement and which states that the ESP has entered into a SC agreement with the

ESP. The copy or declaration shall be submitted to the Energy Division on or before the date when the ESP signs up its first customer. If the ESP is an SC authorized by the California ISO, this requirement is waived.

The Commission invites comments on the proposed standards. Interested persons may file and serve opening comments regarding the proposed standards with the Docket Office. If any standards are proposed that differ from the Commission's proposed standards, the commenting party should provide all pertinent details of the standards that it proposes. Opening comments shall be due 20 days from today. Any person may file and serve reply comments, which shall be due 35 days from today. Following the receipt of comments, the Commission will adopt permanent standards for proof of financial viability, and proof of technical and operational ability. Should the permanent standards differ from the interim standards that we adopt today, all ESPs may be required to provide additional proof of financial viability and technical and operational ability.

5. Interim Standards

Consistent with the intent of the Legislature that consumers "should be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive," the Commission should adopt interim standards for proof of financial viability and proof of technical and operational ability. The interim standards will ensure that all registered ESPs are financially, technically, and operationally capable of conducting a business. Furthermore, the adoption of the interim standards will help "to protect small consumers against deceptive, unfair, or abusive business practices, or insolvency of the entity offering retail electric service." (P.U. Code Section 391(g)(2) and (3).) We adopt the following interim standards.

- (1) Effective immediately, we confirm the Energy Division Director's action that all ESPs offering electric services to residential and small commercial customers are required to have an executed UDC-ESP service agreement with each UDC in whose territory the ESP is offering services. The ESPs who have been registered on or before today are prohibited from marketing, advertising, or otherwise offering for sale any electric services to these customers unless the ESP has executed the service agreement. All ESPs who have been

registered on or before today shall submit a copy of the executed UDC-ESP service agreement for each UDC territory in which the ESP plans to do business. The copies shall be attached to the updated ESP registration application form that each ESP registrant is required to complete and submit as part of its supplemental registration information filing.

- (2) Before an entity can apply to register as an ESP to offer electrical services to residential and small commercial customers, the entity is required to enter into a UDC-ESP service agreement with each UDC in whose service territory the ESP is planning to offer electrical services. A copy of each agreement shall be attached to the ESP registration application form. Line number 15 of the form has been revised to reflect this interim standard.
- (3) On line 16 of the ESP registration application form, each registered ESP and all prospective ESP applicants shall be required to provide the names of the key personnel involved in the technical and operational aspects of the business, their titles, and a description, including the time period, of each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the ESP will be doing the metering or billing on behalf of the ESP, the names of the companies providing those services and their experience shall be disclosed. If the applicant has been authorized by the California ISO to act as an SC, this requirement is waived. If the ESP has been authorized by the ISO to be an SC, the ESP shall submit a copy of the authorization as part of the ESP registration application form.
- (4) Prior to signing up and initiating a DASR on behalf of any residential or small commercial customer, a registered ESP is required to post a cash security deposit (cashier's check) of \$25,000 with the Commission, or to secure a financial guarantee bond in favor of the Commission for that amount. In the alternative, the ESP may open a customer trust account in that amount so long as the format of the trust account has been approved by the Commission's General Counsel to ensure that residential and small commercial customers will have adequate recourse to the monies in the event of the ESP's fraud or non-performance. All registered ESPs and all prospective ESPs are put on notice that this security deposit requirement may change once final financial viability standards are adopted by the Commission. All currently registered ESPs who have signed up or initiated a DASR on behalf of a residential or small commercial customer shall tender the security deposit or bond to the Commission within 14 days. Should the customer trust account method be used, the ESP will be required to

post the security deposit or bond pending the approval of the trust account format by the General Counsel.

- (5) Each registered ESP is required to submit a copy of its Section 394.5 notice to the Energy Division when the ESP signs up its first customer or when the first standard service plan filing of the ESP is due, whichever is earliest. ESPs who have already entered into an agreement with a residential or small commercial customer shall submit the Section 394.5 notice to the Energy Division within 15 days of today's date.
- (6) Each ESP is required to submit a copy of all of its SC agreements or a signed declaration from each SC with which it has an agreement and which states that the ESP has entered into a SC agreement with the ESP. The copy or declaration shall be submitted to the Energy Division on or before the date when the ESP signs up its first customer. If the ESP is an SC authorized by the California ISO, this requirement is waived. ESPs who have already entered into an agreement with a residential or small commercial customer shall submit the SC agreement or the declaration as part of the ESP's supplemental registration information filing, unless the ESP is an authorized SC, in which case this requirement is waived.

The Energy Division is directed to take all the necessary action to ensure that these interim standards are complied with, and shall establish or coordinate all the necessary work needed to effectuate these interim requirements.

If a currently registered ESP decides that it cannot meet the interim standards, or that it no longer wants to offer electrical services to residential or small commercial customers, the ESP may submit a request to the Energy Division-ESP Registration, asking that its ESP registration be cancelled or that it be placed on inactive status as discussed infra. The Director of the Energy Division or his designee is delegated the authority to cancel the ESP's registration upon such a request. The effect of such a cancellation is that the ESP shall no longer be a registered ESP and may not offer electrical services to any residential or small commercial customer in California. The Energy Division shall notify all UDCs as soon as possible as to which ESP registration numbers have been cancelled.

E. Section 394.3 Fees

In addition to the \$100 registration fee that ESPs must pay when they register, Section 394.3(b) provides:

“The commission shall annually determine the costs of administering the registration program and other facets of consumer protection directly related to the direct access transactions of registered entities, including the cost for the duties imposed pursuant to subdivision (c) of Section 392.1. The commission shall only collect those costs not already being collected elsewhere. Registrants who fail to submit to the commission required fees or information upon which fees are calculated within 30 days of billing shall be subject to a 15-percent penalty.”

It is unclear from the wording of Section 394.3(b) whether the Legislature intended that the Commission should have the discretion to assess the ESP registrants an annual charge to cover the costs of administering the registration program and other facets of consumer protection. When read together, the three sentences of the subdivision strongly suggest that the costs of the registration program and other consumer protection activities should be collected from the ESP registrants on an annual basis.

The first sentence of Section 394.3(b) seems to contemplate that the annual cost be determined before any fee is imposed. Thus, before we impose any additional fee, the Commission needs to “annually determine the costs of administering the registration program and other facets of consumer protection directly related to the direct access transactions of registered entities, including the cost for the duties imposed pursuant to subdivision (c) of Section 392.1.” The Executive Director shall be directed to have the staff determine such costs and prepare a report, along with a proposed resolution adopting this annual charge for the Commission’s consideration. In preparing such a report, the staff must exercise caution in determining what costs should be included in the calculation of the annual fee. The determination of the relevant costs should be limited to only those items set forth in the first sentence of Section 394.3(b). On a going-forward basis, the Commission needs to be cognizant of the costs of activities that could drive these annual costs even higher. Higher fees will

discourage new entrants from entering the market, and is contrary to our goal of opening the electricity market to more robust competition.

This report shall be submitted to the Commission by July 1, 1998.¹⁴ It is our intent to consider the report and resolution, and to adopt a charge that is to be imposed on all registered ESPs no later than September 1, 1998, and on September 1 of each subsequent year.

This annual fee should not be imposed from the time the ESP registration process first began. That is because the size of the fee is unknown at this time. The uncertainty of having a fee imposed retroactively could discourage participants from entering the market to serve residential and small commercial customers.

F. Denial, Suspension And Revocation Procedures

1. Denial Of Registration

SB 477 contains several references with respect to when the Commission can suspend or revoke an ESP's registration. In addition, Section 394.1 contains detailed procedures regarding the non-approval of an applicant's request for an ESP registration number. An explanation of these provisions is provided in this decision so that all ESPs are aware of the procedures that we will follow.

Section 394.1(a) requires that an ESP's registration be deemed approved and a registration number issued no later than 45 days after the information is submitted. However, if there is evidence to support a finding that "the entity has committed an act constituting grounds for denial of registration," the Executive Director must make such a finding, and the entity is to be notified in writing of such a finding.

The grounds for denying an ESP's registration include those set forth in Division 1, Part 1, Chapter 2.3 of the Code as well as the following:

¹⁴ In accordance with Section 394.3(b) the report and proposed resolution are to be provided on an annual basis. We shall direct the Executive Director to ensure that such a report and resolution shall be submitted to the Commission on or before July 1st in each succeeding year.

“(c) The commission may deny an application for registration in accordance with the provisions of subdivision (b) on the grounds that the entity or any officer or director of the entity has one or more of the following:

“(1) Been convicted of a crime as described in paragraph (8) of subdivision (a) of Section 394.

“(2) Failure to make a sufficient showing with respect to paragraphs (1) to (10), inclusive, of subdivision (a) of Section 394.

“(3) Knowingly made a false statement of fact in the application for registration.

“The commission may deny registration pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties required to provide retail electric service to end use customers of electricity or the false statement is material to the registration application. ...”
(P.U. Code Section 394.1(c).)

Prior to the issuance of the Executive Director’s finding, we shall require that the Executive Director consult with the assigned Commissioners before such a finding is issued. This will provide a check on the Executive Director’s action before the registration application is denied.

Once the applicant is notified in writing of the Executive Director’s finding, Section 394.1(b) provides that the documents submitted by the entity are to be filed as a formal application for registration, an expedited hearing is to be noticed, and a hearing is to be held within 30 days of the notification. Within 45 days after holding such a hearing, the Commission is required to issue a decision on the registration request based on the evidence presented at the hearing.

We will order the Director of the Energy Division to ensure that the staff of the Energy Division, in conjunction with the CSD, Executive Director and the ALJ Division, develop the necessary procedures required by Section 394.1.

2. Suspension And Revocation

Sections 394(d) and 394.25 address the procedures that apply to the suspension or revocation of an ESP's registration for conduct specified in section 394.25(b). Section 394.25(a) sets forth the procedure for suspending or revoking an existing ESP's registration.¹⁵ Section 394.25(a) provides in pertinent part:

“Upon a finding by the commission's executive director that there is evidence to support a finding that the entity has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the entity in writing and notice an expedited hearing on the suspension or revocation of the entity's registration to be held within 30 days of the notification to the entity of the executive director's finding of evidence to support suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.”

The procedure contained in Section 394.25(a) is very similar to the procedure for the denial of an ESP's registration as set forth in Section 394.1(b).

We have developed some preliminary internal processes for initiating the Section 394.25(a) procedure. Much of the work leading up to the Executive Director's finding under Section 394.25(a) will be left to the CSD. The CSD, whose function is to protect consumers by ensuring that those companies subject to the Commission's jurisdiction are operating properly, will gather the evidence upon which any finding will be based, in coordination with the Energy Division. The Director of CSD shall then recommend to the Executive Director whether a Section 394.25(a) finding should be issued. If the Executive Director believes that there is evidence to support a finding that the ESP has committed an act constituting grounds for suspension or revocation, the Executive Director shall notify the coordinating Commissioner for consumer protection. If the coordinating Commissioner concurs, the Executive Director shall

¹⁵ Civil and criminal actions may also be taken against an ESP pursuant to Section 394.25.

then be responsible for notifying the entity of the finding and of the expedited hearing.¹⁶

The Executive Director shall then cause the Section 394.25(a) notice to be filed with the Docket Office. The notice shall serve as the initiating document to open a docket. The Chief ALJ shall ensure that these procedures are developed and reflected, as appropriate, in the Rules of Practice and Procedure.

We note that this procedure may be initiated even though the ESP is still conducting its day-to-day operations. The question raised by Section 394.25(a) is whether the statute permits the Commission to suspend an ESP's registration upon making the finding but before the hearing has been held and decision issued.

We do not believe that the Legislature intended that an ESP's registration could be suspended pending a hearing in most cases. The exception, where suspension pending a hearing is consistent with the requirements of due process, arises when an ESP's conduct jeopardizes reliable electric service, or otherwise threatens the safety, health and welfare of the public. (See PU Code Section 330(g).) The right to suspend the ESP registration on an interim basis does not violate due process when there is a compelling state interest and a timely hearing is provided. (Habrun v. Department of Social Services (1983) 145 Cal.App.3d 318, 322. See Hodel v. Virginia Surface Mining & Recl. Assn. (1981) 452 U.S. 264, 301; Boddie v. Connecticut (1971) 401 U.S. 371, 378.)

Section 394.25(b) specifically provides: "A registered entity may have its registration suspended or revoked, immediately or prospectively" for any of the acts enumerated in Section 394.25(b)(1), (b)(2) or (b)(3). (Emphasis added.)¹⁷ Although the

¹⁶ In the fourth line of Section 394.1(b), the subdivision states in part that the "commission shall notify the entity in writing and notice an expedited hearing...." (Emphasis added.) We interpret this passage to mean that the Executive Director, on behalf of the Commission, shall notify the entity and notice the hearing date. (See PU Code Section 308.)

¹⁷ Section 394.25(b) provides:

"(b) A registered entity may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

Footnote continued on next page

word “immediately” appears in subdivision (b), we believe that the Legislature intended that the Commission should have the authority to immediately suspend an ESP’s registration on an interim basis prior to a hearing should it be necessary. However, this right to suspend on an interim basis should be exercised only when the circumstances warrant an immediate suspension as described above.

The authority of the Commission to suspend on an interim basis is consistent with the Legislature’s findings and declarations that “customers be protected from unfair marketing practices,” that there be “a system of registration and consumer protection for the electric industry” which is “designed to ensure sufficient protection for residential and small commercial consumers,” and that “[c]onsumers be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive.” (P.U. Code Section 391(c), (f), and (g)(2).) Without the authority to immediately suspend an ESP’s registration pending a hearing, an ESP engaging in particularly abusive marketing practices could continue such practices until a Commission decision was issued. The logical and practical interpretation of Section 394.25(a), when read in context with subdivision (b) and Section 391, is that the Commission can immediately suspend an ESP’s registration when circumstances are such that an immediate suspension is warranted. This temporary suspension procedure is similar to the civil remedy of the issuance of an ex parte temporary restraining order. (See Code Civ. Proc. Section 527.) A possible example of where an immediate suspension on an interim basis could arise is if an ESP’s operations threaten to cause a

“(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

“(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the registered entity or its employees, agents, or representatives, or to disadvantage retail electric customers.

“(3) Where the commission finds that there is evidence that the entity is not financially or operationally capable of providing the offered electric service.”

failure in the grid system, since such a failure could pose a threat both to the reliability of service and to the public welfare.

If we decide to immediately suspend an ESP's registration using this procedure, the suspension should only be temporary and a prompt post-suspension hearing should be provided. Section 394.25(a) provides for holding an expedited hearing within 30 days of the notification of the Executive Director's finding of evidence to support denial of registration. It is our belief that this hearing date should be held as soon as feasible, and as short as ten to fifteen days, especially if the ESP has been suspended pending a hearing. This hearing will provide the ESP with an opportunity to raise all issues relevant to the alleged violation. In all other cases where the Executive Director issues a Section 394.25(a) finding that there is evidence of a violation of one of the acts in Section 394.25(b), the expedited hearing provided for by Section 394.25 will precede any suspension or revocation.

Should the Commission temporarily suspend an ESP's registration prior to the holding of a hearing, we believe that a procedure should be established which permits the ESP to request that the temporary suspension be lifted at the conclusion of the hearing. Although this process is not provided for in Section 394.25, it permits the assigned Commissioner presiding at the hearing to lift the temporary suspension immediately after hearing all of the evidence subject to ratification by the full Commission. (See Cal. Const., Art. XII, Section 2.) Thus, should the Commission temporarily suspend an ESP's registration prior to the holding of a hearing, the ESP may request of the assigned Commissioner at the conclusion of the hearing that the temporary suspension be lifted pending the Commission decision. The assigned Commissioner shall have the authority to set aside the temporary suspension and reinstate the ESP's registration until the Commission issues its decision. Such a procedure provides the assigned Commissioner with an opportunity to reinstate the ESP should the evidence show that a temporary suspension is not warranted. This procedure is analogous to the stage in civil procedure where the request for a preliminary injunction is granted or denied.

Section 394.25 does not mention the opening of a formal investigation. It is our belief that the Section 394.25 procedure may be initiated by the Executive Director and that a companion investigation need not be opened. In cases where suspension or revocation is contemplated, we anticipate using the Section 394.25 proceeding, rather than taking other action such as opening an investigation. The Commission's authority to suspend or revoke under Section 394.25 includes the authority to issue lesser penalties, such as fines or other sanctions, for violations of Section 394.25(b). (See PU Code Section 394.25(a).) However, should circumstances warrant, Section 394.2 provides that "[w]here the commission reasonably suspects a pattern of customer abuses, the commission may, on its own motion, initiate investigations into the activities of entities offering electrical service."

The Director of CSD, in conjunction with the Executive Director and the ALJ Division, shall develop the appropriate procedures as set forth in Section 394.25 and as discussed above. The ALJ Division shall oversee the process of incorporating these procedures in our Rules of Practice and Procedure.¹⁸ CSD and the ALJ Division shall also develop the necessary notifications and directives that need to be conveyed to the UDCs should a suspension or revocation of an ESP's registration number be issued.¹⁹

If an ESP's registration is revoked, Section 394(d) provides:

¹⁸ We recognize that the expedited hearings required by Sections 394.1 and 394.25 may conflict with the SB 960 (Stats. 1996, ch. 856) requirements that are set forth in our Rules of Practice and Procedure. Since both sections require that expedited hearings be held, and since SB 477 was enacted after SB 960, the Commission and the staff will need to determine which provisions of SB 960, if any, should apply to these kinds of expedited hearings. SB 960 and the expedited hearings provided for in SB 477 should be harmonized where possible. If that is not possible, then the later enacted and more specific provisions in Sections 394.1 and 394.25 should control.

¹⁹ The UDCs have suggested in their comments to the draft decision the various kinds of procedures that should be followed if a suspension or revocation of a registered ESP occurs. Their suggestions should be considered in developing the appropriate procedures for dealing with suspension and revocation scenarios.

“Before reentering the market, entities whose registration has been revoked shall file a formal application with the commission which satisfies the requirements set forth in Section 394.1 and demonstrates the entity’s fitness and ability to comply with all applicable rules of the commission.”

Thus, if the Commission revokes an ESP’s registration, the only way in which the ESP’s registration can be reinstated is to follow the procedure set forth in Section 394(d). The references to “shall file a formal application” suggests that the ESP must file an application with the Docket Office, which will be formally docketed as an “application” proceeding. The application must be approved in a Commission decision before the ESP’s registration can be reinstated.

3. Ministerial Suspension

Section 394.4(h) provides authority for the Commission or the staff to ministerially suspend ESPs who fail to provide the information required by SB 477 or by the Commission. (See footnote 8.) This type of suspension can occur if the ESP fails to submit the revised ESP registration form or any of the other documents required by SB 477 or by the Commission.

This ministerial suspension is appropriate in light of the requirements of SB 477. SB 477 requires the ESPs to provide certain kinds of information and to do certain things. For instance, Section 394.1(d) provides that the Commission “shall require” registered ESPs to update Section 394(a) registration information within 60 days of any material change in the information provided. Section 394.1(d) also provides that “material changes to any other information required pursuant to this article shall be updated annually.” In addition, Section 392.1(a) requires ESPs to file with the Commission descriptions of “the terms and conditions of any standard service plan made available to residential and small commercial customers.” Section 394.5(a) requires ESPs “prior to the commencement of service, to provide the potential customer with a written notice” describing the ESP’s proposed service and its terms. Section 394.5(b) requires ESPs to “provide the Commission with a copy of the Section 394.5 notice as part of the standard service plans.

The failure to comply with the above statutory directives is not a ground for suspension under Section 394.25(b). However, the Legislature has indicated that the Commission should have a means of enforcing those requirements. For example, Section 394(b) provides that if the registration filing is not timely supplemented, the ESP's registration shall be suspended. As the California Supreme Court has observed, "whatever is necessarily implied in a statute is as much a part of it as that which is expressed." (Traverso v. Department of Transportation (1993) 6 Cal.4th 1152, 1163.) Thus, the provisions of Section 394.25 are not the sole means of suspending an ESP.

The Legislature specifically granted the Commission broad authority in Section 394.4(h) to fashion additional consumer protection rules. That subdivision provides that the Commission "may adopt additional residential and small commercial consumer protection standards which are in the public interest." An administrative suspension procedure is consistent with the Legislative declarations that "customers be protected from unfair marketing practices and that market participants demonstrate their creditworthiness and technical expertise..." and that "consumers be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive." (PU Code Section 391(c) and (g)(2).) We therefore conclude that Section 394.4(h) provides the Commission with the authority to develop rules for suspending ESPs who fail to provide the Commission with the information required by applicable statutes or by Commission order. The guidelines for this suspension procedure are described below.

The failure of an ESP to submit information required by SB 477, or to submit additional registration and marketing material ordered by the Commission, will result in a suspension of the ESP's registration until such time as the ESP submits the required information. Prior to any administrative suspension, the Energy Division will provide the ESP with a "Notice of Impending Suspension For Failure To Submit Required Information." The Energy Division shall develop a notice which adheres to the following. First, the notice shall be sent to the ESP by registered or certified mail and shall advise the ESP that its registration shall be suspended effective 15 days from

the date of the notice. Second, the notice shall advise the ESP that it may avoid suspension by submitting the required information to the Commission. The required information shall be clearly described in the notice. Third, the notice shall advise the ESP that, pursuant to Section 394.25(c), a suspension will result in a requirement that the ESP cease serving customers and that its customers will be served by the applicable UDC until such time as the customers may select service from another service provider. Fourth, the notice shall provide the name, address and telephone number of a person in the Energy Division that the ESP may contact if it has any questions about the reasons for the impending suspension, if it has any response, or if it requests a review of the proposed suspension by the Energy Division. The Energy Division shall develop procedures for this review process. However, this review process by the Energy Division shall be limited to a determination of whether the ESP provided the required information.

If the 15-day period set forth in the notice has passed and the ESP has not provided the required information or otherwise responded, the Energy Division may issue a “Notice Of Suspension Of Registration” to the ESP. This notice shall be developed by the Energy Division and shall set forth the following. First, the notice shall advise the suspended ESP that its registration has been suspended for failure to submit required information to the Commission and for failure to comply as directed by the Notice of Impending Suspension. Second, the information which the ESP failed to supply shall be clearly described. Third, the notice shall advise the ESP that it must within 48 hours cease serving existing residential and small commercial customers and cease all other operations relating to the offering of electric service in California to these customer classes, including, but not limited to marketing, advertising, and solicitation of new customers.²⁰ And fourth, the notice of suspension shall state that the suspended

²⁰ The 48 hours is to allow for any marketing or solicitation materials that may have already been mailed to the customer.

ESP may have its registration reinstated by providing the required information to the Commission.

If a suspended ESP fails to make an effort to have its registration reinstated, an investigation or a proceeding under Section 394.25(b)(3) may eventually be opened to revoke the registration of the previously suspended ESP.

4. Inactive Status

When the Commission first established the ESP registration process in July 1997, the Commission recognized in D.97-05-040 at page 59 that should additional registration-related requirements be adopted, registrants would be required to supplement or update their registration information. Some entities that registered with the Commission may have registered to preserve their rights and abilities to enter the market at a future date, rather than to set up immediate operations.

Today's decision issues for comment proposed standards with respect to an ESP's technical, operational and financial capabilities. In addition, this decision adopts interim standards that reflect these capabilities. Some of these interim standards and the proposed final standards will only apply if the ESP is able and willing to commence operations in the near term. It is inequitable to suspend an ESP who registered under more liberal registration requirements and who does not want to immediately commence operations but may want to operate in the electricity market in the near future or who is unable to comply with the additional registration requirements at this time.

Pursuant to our authority under Section 394.4(h) to adopt additional consumer protection standards that are in the public interest, we will permit any ESP registered on or before today's date to be placed on "inactive status" if the ESP does not presently intend to offer electrical service to residential or small commercial customers. ESPs that choose to be placed on inactive status shall be required to comply with the rules and procedures set forth below. ESPs on inactive status shall not be required to provide the Commission at this time with the updated registration information and the additional information we require of active ESPs as a result of today's decision. Nor will these inactive ESPs face suspension for failure to provide such information.

A registered ESP who chooses to be placed on inactive status is prohibited from advertising, marketing, or otherwise offering electrical service to residential or small commercial customers. Any entity on inactive status who engages in conduct for which supplemental registration information is required, as determined in this decision, will face suspension or revocation proceedings and any other penalties provided for in the code.

Currently registered entities that wish to select inactive status must follow the rules set forth below. Inactive status may be selected only by registered ESPs in good standing at the time the choice is made. An ESP may choose inactive status by mailing a letter to the Energy Division, ESP Registration, 505 Van Ness Avenue, 4th Floor, San Francisco, California 94102. The letter shall state the ESP's registration number, that the entity wants to be placed on inactive status, and that the person signing the letter has the authority to bind the entity. The letter shall also affirm under penalty of perjury under the laws of California that the entity will not advertise, market or otherwise offer electrical service to residential or small commercial customers while the entity is on inactive status. Such a letter must be sent within 20 days of today's decision in order to place the entity on inactive status. The Energy Division shall notify all the UDCs as soon as possible after the receipt of such letters so that the UDCs are aware of who the inactive ESPs are, and to take steps to ensure that no DASRs are submitted by the inactive ESPs.

An entity may not remain on inactive status indefinitely. During the period from June 15, 1998 to July 1, 1998, each entity on inactive status must advise the Energy Division in writing again whether it intends to: (1) remain on inactive status for one more year; (2) comply with applicable requirements and become active; (3) voluntarily give up its registration number; or (4) face involuntary suspension proceedings. Any entity failing to advise the Commission in writing of its intent on or before July 1, 1998 will face suspension proceedings as described in Section IV.F.3 above for failure to provide the required information.

During the period from June 15, 1999 to July 1, 1999, each entity that has been on inactive status for the prior period must advise the Energy Division in writing

whether it intends to: (1) remain on inactive status for one more year; (2) comply with applicable requirements and become active; (3) voluntarily give up its registration number; or (4) face involuntary suspension proceedings. Any entity failing to advise the Commission in writing of its intent on or before July 1, 1999 will face suspension proceedings as described in Section IV.F.3.

On July 1, 2000, the inactive status shall be terminated. The Energy Division is directed to take appropriate steps prior to that date to permanently revoke the registration number of any remaining entities who are on the inactive status list.

Any entity on inactive status may elect to return to active status at any time by providing written notice to the Energy Division of its intention. Such a notice shall be accompanied by all of the required information required by this decision, as well as any future requirements that may be imposed. Within 15 days of receipt of the information submitted by the entity, the Energy Division shall notify the entity that it has received the information and whether the submitted information complies with all applicable statutes, rules and orders. If the entity has complied, the Energy Division shall return the entity to active status and provide the entity with written notice of such status. Upon receipt of this active status notification, the entity may commence offering electrical service to residential or small commercial customers.

G. Section 392.1 Requirements

1. Introduction

Some of the comments regarding consumer protection raise the issue of whether there is a need for the Commission to disseminate information about ESPs, any complaints filed against them, and the quality of service that ESPs offer. Section 392.1, which was added by SB 477, provides for the establishment of certain procedures which address these issues. Section 392.1(a) states:

“(a) The commission shall compile and regularly update the following information: names and contact numbers of registered providers, information to assist consumers in making service choices, and the number of customer complaints against specific providers in relation to the number of customers served by those providers and the

disposition of those complaints. To facilitate this function, registered entities shall file with the commission information describing the terms and conditions of any standard service plan made available to residential and small commercial customers. The commission shall adopt a standard format for this filing. The commission shall maintain and make generally available a list of entities offering electrical services operating in California. This list shall include all registered providers and those providers not required to be registered who request the commission to be included in the list. The commission shall, upon request, make this information available at no charge. Notwithstanding any other provision of law, public agencies which are registered entities shall be required to disclose their terms and conditions of service contracts only to the same extent that other registered entities would be required to disclose the same or similar service contracts.

- “(b) The commission shall issue public alerts about companies attempting to provide electric service in the state in an unauthorized or fraudulent manner as defined in subdivision (b) of Section 394.25.
- “(c) The commission shall direct the Office of Ratepayer Advocates to collect and analyze information provided pursuant to subdivision (a) for purposes of preparing easily understandable informational guides or other tools to help residential and small commercial customers understand how to evaluate competing electric service options. In implementing these provisions, the commission shall direct the Office of Ratepayer Advocates to pay special attention to ensuring that customers, especially those with limited-English-speaking ability or other disadvantages when dealing with marketers, receive correct, reliable, and easily understood information to help them make informed choices. The Office of Ratepayer Advocates shall not make specific recommendations or rank the relative attractiveness of specific service offerings of registered providers of electric services.”

The Commission has previously implemented some of the provisions of Section 392.1. In D.97-05-040, we established the ESP registration procedure. A listing of all the ESPs who have ever registered with the Commission appears on the Commission’s web site (www.cpuc.ca.gov). This listing contains each registered ESP’s

name, telephone number, address, and a notation whether the ESP's registration has been suspended, cancelled or revoked. Additional information about the type of entity, the officers or managers, and the contact person for complaints is also listed. This listing provides some of the information necessary to assist consumers in making service choices.

Section 392.1(a) provides that the Commission "shall maintain and make generally available a list of entities offering electrical services operating in California." For those consumers who do not have Internet access, the Energy Division shall ensure that such a list can be made available to the public upon request, at no charge.

There are four provisions in Section 392.1 for which we need to establish procedures. We address each of them below.

2. List Of Electrical Corporations And Public Agencies

The first procedure is the development of a list of "registered providers and those providers not required to be registered who request the commission to be included in the list." The procedure for the establishment of a list of registered providers has already been established. A procedure for establishing a list of providers who are not required to be registered was recently initiated by the staff. We elaborate on that procedure here.

Electrical corporations as defined in Section 218, and public agencies that offer electrical service to residential and small commercial customers within their own political jurisdiction or within the service territory of the local publicly owned electric utility, are exempt from having to register with the Commission. (P.U. Code Section 394(a).)²¹ They may, however, request that they be included on the list of entities offering electrical services in California. (P.U. Code Section 392.1(a).)

²¹ As we noted in D.97-05-040 at page 54, a public agency is still required to register with the Commission if it is offering electrical service in the service territories of the electrical corporations. (P.U. Code Section 394(a).)

The Commission knows who the electrical corporations are due to our regulatory authority over those entities. The problem that arises in developing this list is to determine what the Legislature meant by the term “public agency.”

AB 1890 and SB 477 do not provide a definition of a public agency. Nor is there any definition of public agency in the Public Utilities Code. However, there are several provisions in SB 477 which shed some light on what the Legislature intended by the term “public agency.” In Sections 366(c), 366.5(e), 394(a), 394(c), 394.2(a), and 394.4, the term is used in the context of serving customers within their jurisdiction, or “within the service territory of a local publicly owned electric utility.” Thus, the Legislature intended that the entity be related to a government organization, and that one of the entity’s purposes is to offer electrical services or the opportunity to purchase electricity to end-use consumers within its jurisdiction.

Due to the aggregation opportunity created by direct access, local government entities such as school districts, counties, and cities may enter the market to aggregate the electricity needs of their respective facilities. On a larger scale, statewide organizations of these government entities may band together to obtain similar cost savings. With that in mind, we believe that the following definition of “public agency” should apply for the purposes of Chapter 2.3 of the Public Utilities Act.

“Public agency,” as used in Chapter 2.3, means the state, any city, county, city and county, municipal corporation, public district, special district, or public authority located in whole or in part within this state, or any board, commission, or agency thereof, which provides or has authority to provide electrical services. “Public agency” also includes any non-profit group whose membership is confined to the type of entities described in the first sentence of this definition.

Electrical corporations and public agencies who want to be included on the list of electrical corporations and public agencies should submit a letter to the following: CPUC, Energy Division-ESP Registration, 505 Van Ness Avenue, San Francisco, CA 94102-3298. The letter should request that the name of the electrical corporation or public agency be included on the list. The name of a contact person, the address of the company, and the telephone number are to be included. If a public agency is making the request, the public agency shall provide proof of its status as a

public agency.²² The Director of the Energy Division is directed to develop the procedures necessary to create a listing of those electrical corporations and public agencies who are not required to register in accordance with Section 394.

3. Compilation Of Customer Complaints

The second item Section 392.1 requires is a system to compile and regularly update “the number of customer complaints against specific providers in relation to the number of customers served by those providers and the disposition of those complaints.”

The use of the term “complaint” could refer to a telephone call to the CSD staff seeking to resolve a problem with an ESP. The staff currently receives many of these types of calls. A large number of the calls are resolved without resulting in the formal filing of a complaint against the entity at the Commission. We believe that the use of the term “complaint” in Section 392.1 was intended to refer to only the complaints that are submitted or filed in accordance with Section 394.2. Although some of the parties have suggested that this will limit the actual number of complaints that are reported, the opposite will occur if the Commission has to report every written letter or telephone call complaining about an ESP.

We will direct the CSD, in conjunction with the Docket Office, the Information Resources Branch, and the Energy Division, to develop and prepare for the Commission a report of the number of Section 394.2 customer complaints²³ against both registered ESPs and non-registered ESPs, the number of investigations involving both registered ESPs and non-registered ESPs, and the status of those proceedings. The tracking of investigations will provide a more comprehensive picture of possible abuses

²² For example, the proof could come in the form of a copy of the documents establishing the entity’s status as a public agency, or a citation to a published judicial opinion or administrative agency decision.

²³ In order for the report to accurately reflect the number of customer complaints, the report should only report end-use customer complaints against the electric providers. It should not report any competitor complaints against a provider.

by non-registered ESPs. Except as discussed below, the information contained in these CSD reports about the number of customer complaints and the number of investigations shall be made available to the public upon request. The CSD staff shall also put this information on the Commission's Internet site.

Initially, this Commission report should be prepared by the CSD on a quarterly basis beginning July 15, 1998. The first report shall cover the start of direct access to the end of June 1998. Quarterly reports will also be prepared for October 15, 1998, January 15, 1999, April 15, 1999, and July 1, 1999. These reports shall address the activity in the preceding three-month quarter. After that, the reports will be prepared on a semi-annual basis beginning with the report due on January 18, 2000. As the reports are submitted to the Commission, the Commission shall in turn forward a copy of the report to the Legislature.

4. Standard Service Plan Filing

The third provision in Section 392.1(a) for which the Commission needs to establish procedures concerns information regarding the "terms and conditions of any standard service plan made available to residential and small commercial customers."

It appears that the Legislature intended that the information regarding the number of customers served by registered ESPs be provided to the Commission. Such an intent is expressed in the first three sentences of Section 392.1(a), particularly the phrase which states "in relation to the number of customers served by those providers...." The customer information could be requested by the Commission staff from the UDCs or it could be part of the filing regarding the terms and conditions of an ESP's standard service plan. In order for us to track the number of customers served by registered ESPs, we will require that all registered ESPs include in their filing the number of customers served. We will further divide the number of customers into the type of customers served. Appendix B of this decision reflects the standard format that all registered ESPs will be required to file.

The number of customers that each ESP is serving will constantly be changing. Initially, at the outset of competition, there will be a "ramping up" process where the number of customers choosing registered ESPs will gradually increase until

the number of customers level off. In order to accurately track the number of customers served by each registered ESP, we will require that the standard service plan filing be made initially at six-month intervals for a period of three years. The filing shall cover the number of customers that each registered ESP has as of two weeks prior to the filing date. The first filing shall be made on or before July 1, 1998. The filing shall be delivered to: CPUC, Energy Division-ESP Filing, 505 Van Ness Avenue, 4th Floor, San Francisco, CA 94102. All filings shall use a form that is in the same standard format as Appendix B, which is attached to this decision. The next five filing dates are as follows: January 4, 1999; July 1, 1999; January 4, 2000; July 3, 2000; and January 2, 2001. After that, the standard service plan filing shall be filed on or before January 2nd, or the first business day thereafter if January 2 falls on a weekend, of each succeeding year.

The next issue with the standard service plan filing is whether the number of customers reported by the registered ESPs should remain confidential. The protection afforded by Section 583²⁴ does not apply to registered ESPs, unless the ESP happens to be a public utility, a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility. However, General Order (GO) 66-C provides that records or information of a confidential nature furnished to the Commission are not open to public inspection. (GO 66-C, 2.2.) The GO goes on to state that these kinds of records include "Reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage. " Since competition for customers of electricity is now being permitted, the number of customers served by each registered ESP will become more important. If this type of data is made known to other

²⁴ Section 583 states: "No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor."

competitors, such information could place the company at an unfair business disadvantage.²⁵

The quarterly and semi-annual report to the Commission regarding the number of customer complaints will relate the number of customer complaints to the number of customers served by each particular ESP. However, for the reason stated above, the exact number of customers served by the ESP shall not be disclosed to the public. Instead, the number of customer complaints shall be expressed as a percentage. That is, the public information about the number of complaints to the number of customers served should be stated something like: “X percent of the customers of ABC company had submitted or filed complaints against the company.” The percentage figure will still enable a consumer to determine the ratio of the number of complaints to the relative number of customers served.

The standard service plan filing shall also contain information regarding the terms and conditions of any standard service plans that the ESP offers or plans to offer to its residential and small commercial customers. We will require that the ESP attach to the standard service plan filing any printed marketing materials relating to such plans that are mailed or delivered to potential customers as part of the normal package that makes up the ESP’s solicitation effort. The filing of this information will assist the Commission staff in resolving customer complaints. All registered ESPs shall complete the information requested in Appendix B₂ and file the form with the Energy Division in accordance with the schedule set forth above.

The standard service plan filing shall also include the Section 394.5 notice, discussed below, that all registered ESPs are required to provide to potential customers before the commencement of service, as well as any notices to customers that describe a change in the rates, terms or conditions of service as discussed in Section VI of this

²⁵ Each UDC will know the number of customers that an ESP serves by virtue of the direct access service request. We expect that such information shall not be shared or disclosed to any of the UDC’s affiliates unless the affiliate transaction rules in D.97-12-088 are followed.

decision. The Section 394.5 notices that are submitted shall be annotated with a description of the time period in which the notice was used. If the change notice does not state the effective date of the changed rate, term or condition, the change notice shall be annotated with a description of the effective date of the change. Since the first six standard service plan filings will take place on a semi-annual basis, the inclusion of such notices in the filing is consistent with the Section 394.5(b) requirement that the notice be included in the standard service plan filing on at least a semi-annual basis. After the sixth standard service plan filing is made, ESPs shall be required to continue to file the Section 394.5 notice and any change notices with the Energy Division on a semi-annual basis, rather than on an annual basis with the standard service plan filing. The Director of the Energy Division shall be responsible for modifying the procedures necessary to accomplish the filing of the Section 394.5 notice as required by SB 477 and this decision, and to notify all ESPs of the modified filing requirements.

The standard service plan filing shall be filed according to the schedule described earlier. Failure to file the standard service plan filing by the due date may lead to a suspension and possible revocation of the ESP's registration until such time the filing is made. This suspension procedure is appropriate because Section 392.1(a) states that "registered entities shall file with the commission information describing the terms and conditions of any standard service plan made available to residential and small commercial customers." (Emphasis added.) The failure of an ESP to file this information impairs the filing mechanism's goal of protecting consumers from unfair or abusive marketing practices. (P.U. Code Section 391(g)(2).)

The Director of the Energy Division shall ensure that the details of establishing such a filing mechanism, and making all registered ESPs aware of the filing requirements and deadlines, are carried out.²⁶ The information in the standard

²⁶ For example, at the time a new ESP is issued a registration number, the letter informing the ESP of the registration number could also inform the ESP of the standard service plan filing. In addition, a letter should go out to all ESPs several months before the filing date to inform the ESPs of the upcoming filing and the consequences of failing to file the report.

service plan filings regarding the number of customers shall also be coordinated with the reports to the Commission regarding the number of customer complaints against ESPs.

5. Analysis Of The Standard Service Plan Filings

The standard service plan filing is not just to ensure that consumers are protected from unfair or abusive marketing practices. Section 392.1(c) provides that the Commission is to direct ORA to collect and analyze the information contained in the standard service plan filing, along with the number of customer complaints. ORA is to evaluate this information for the “purposes of preparing easily understandable informational guides or other tools to help residential and small commercial customers understand how to evaluate competing electric service options.” In accordance with Section 392.1(c), ORA is to ensure that customers, especially those with limited-English-speaking ability or other disadvantages when dealing with marketers, receive correct, reliable and easily understood information to help them make informed choices. Section 392.1(c) precludes ORA from making specific recommendations or ranking the relative attractiveness of specific service offerings of registered ESPs.

The Director of ORA is directed to establish the necessary procedures and details to carry out the requirements of Section 392.1(c). ORA shall develop recommendations for preparing easily understood information guides or other tools to help consumers understand how to evaluate the various electric service options offered by ESPs. Since the first standard service plan filing will not be made until July 1, 1998, ORA shall be given until October 16, 1998 to prepare a report to the Commission with its recommendations. An earlier report may be submitted should the Director of ORA believe it necessary. The report should address who should be responsible for preparing the information guides or other tools, what the guides or tools should include so that end-use customers can evaluate competing service options, the cost of preparing and distributing the guides and tools, and whether that cost was reflected in the Section 394.3(b) report, which was discussed earlier. After the Commission has had an opportunity to review and consider the report, the Commission intends to issue a decision as quickly as possible to address ORA’s recommendation.

In addition to the above, we propose in Section XI.D of this decision that ORA take the lead for developing a clearinghouse of information for competing service offerings. Such a proposal appears consistent with the Legislature's intent that ORA prepare "other tools to help residential and small commercial customers understand how to evaluate competing electric service options." (PU Code Section 392.1(c).)

V. Solicitation Of Customers

A. Third-Party Verifier

The third-party verification procedure was originally contained in Section 366(d) and (e) as added by AB 1890. We discussed those provisions in D.97-05-040 at pages 45 to 48. Those two subdivisions were subsequently incorporated into Section 366.5 by SB 477, and included as part of the direct access tariff provisions in Appendix A of D.97-10-087.

Several issues have been mentioned regarding the third-party verification process. The first issue is the responsibility of the third-party verifier to retain the verification information. As we noted in D.97-05-040, if slamming-related complaints arise, we will focus our inquiry on whether the ESP properly followed the verification procedures.

The third-party verifier's confirmation of the change may be needed if a hearing is held. Section 366.5(b)(3) provides that the third-party verifier is to obtain the customer's oral confirmation, and is to record that confirmation by obtaining appropriate verification data. That record is to be made available to the customer upon request. Thus, if a customer complains to the Commission that it has been slammed, the record of the verification from the third-party verifier may be useful in detecting whether any slamming occurred. If the ESP or third party verifier is reluctant to provide a record of the verification, the Commission may use its subpoena power to obtain that record.

All ESPs and third-party verifiers should be aware that the Commission will not tolerate slamming in this industry. The Commission also expects all ESPs and third-party verifiers to abide by the statutory provisions governing their activities.

The second issue concerning third-party verifiers is the confidential nature of the information that the end-use customer supplies to the third-party verifier. Section 366.5(b)(3) provides that the information obtained from the customer through the confirmation process is not to be used for any marketing purposes. Both the ESPs and the third-party verifiers need to be aware of this statutory prohibition. Customers will be made aware of this in the Section 394.5 notice, which is discussed later. Any unauthorized release of this information is grounds for a civil suit against the entity or its employees responsible for the violation. The Commission intends to take appropriate action against any ESP who may engage in such activities.

A third issue with respect to the verification procedure is what happens if the ESP violates the verification procedures of Section 366.5. Section 366.5(c) provides:

“Any aggregator or provider of electric power offering electricity service to residential and small commercial customers that violates the verification procedures described in this section shall be liable to the aggregator or provider of electric power offering electricity services previously selected by the customer in an amount equal to all charges paid by the customer after the violation.”

That subdivision contemplates that the ESP who switches a customer without consent is liable to the customer’s original ESP for all of the amounts paid to the new ESP by the customer. Thus, an ESP who slams a customer will not be unjustly enriched by its actions. It also appears that the slamming ESP will be out of pocket for any electricity that it purchased on behalf of the end-use customer.

A related issue is what happens if the customer ends up paying the slamming ESP more money than what it would have paid to its original ESP. Although the circumstances of each case will vary, our impression is that neither the slamming ESP nor the customer’s original ESP should benefit from any overpayment by the customer. If the slamming ESP pays the full amount to the original ESP, the ESP should credit or refund to the customer any amount in excess of the amount that the customer would have been obligated to pay had the customer not been switched.

B. Opt-In and Opt-out Procedures

1. Opt-In List

a. Introduction

In D.97-10-031, the Commission adopted the California Energy Commission's (CEC) proposal that customers should be provided with an opportunity to inform ESPs that they wish to be contacted by ESPs. That decision solicited comment on how this opt-in confidential database should be set up and operated.

Recommendations were filed by the three large utility distribution companies (UDCs) in a joint filing, and by the CEC. Responses to these two recommendations were filed by the CEC, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (Edison), and a joint filing by The Utility Reform Network (TURN) and the Utility Consumer Action Network (UCAN).

b. UDC Proposal

The UDCs propose that those ESPs interested in using the database pay the cost of developing and disseminating the database.²⁷ The UDCs recommend that the Commission first solicit interest and commitment from the ESPs with respect to the opt-in list. If there is insufficient interest in this database, or if the costs of the database exceeds the value that ESPs are willing to pay for the information, the UDCs contend that the Commission should reconsider whether such a database should be created at all.

In order to minimize costs and to provide the flexibility as to when customers are to be included in the database, the UDCs recommend that the opt-in customer solicitation be disseminated as part of a bill insert.

To create the opt-in database, the UDCs propose the following five-step process: (1) design of the solicitation; (2) mailing of the solicitation; (3) processing

²⁷ For the costs that are not recovered from the ESPs, the UDCs request that the Commission rule that such costs are eligible for recovery under Section 376.

of the customer responses; (4) extracting usage information; and (5) compiling the data and disseminating it to the ESPs. For each of the steps, the UDCs propose that the services of an outside vendor be used as much as possible. By doing so, the UDCs contend that it will be easier to identify the costs of creating and disseminating the opt-in database for subsequent cost recovery. In addition, the use of an outside vendor will enable the UDCs to focus on other direct access activities.

The UDCs envision that the solicitation will inform customers about the history and purpose of the database, the type of confidential information to be included, and how a customer can elect to be included in the database. The UDCs propose that there be a tear-off section that the customer returns to a preprinted return address. Customers would have the option to be contacted by telephone, mail, or by both means. If customer information usage is to be included in the database, customers would be required to fill in their account numbers.

The UDCs have identified three options for soliciting interest in the opt-in database. The first is that the solicitation could be mailed directly to the customer. The second method is to use a UDC bill insert. And the third method would be to include the solicitation as part of the second quarter CEP mailing. Among the three options, the UDCs prefer the use of bill inserts.

c. CEC Proposal

The CEC believes that the main purpose of the opt-in list is to stimulate a competitive marketplace for small customers. There must be a framework which permits legitimate businesses to have access to this information, while protecting the rights of customers.

The CEC also contends that consumers need to learn how to make informed choices about their confidential information and their privacy in the restructured electricity market. The CEC is of the opinion that customers should be given clear and unbiased information about the pros and cons of being added to the opt-in list. If a consumer fails to make a decision, the customer should not be included in the opt-in list.

The CEC recommends that the opt-in database be periodically updated, instead of confining the list of names to a one-time solicitation. The CEC believes that this could be easily updated at little incremental expense. Updating of the list could also involve the Electric Education Trust (EET).

The CEC recommends that the information to be released include the customer's rate category, the standard industrial classification (SIC) code, the most recent twelve months of energy consumption, and the utility account number. The CEC would not include customer credit information and bill payment history in the release.

The CEC contends that registered ESPs and energy efficiency providers should be eligible to receive the opt-in list. The CEC argues that energy efficiency providers should be provided with access because consumers may need other energy resources and services. In the future, the CEC recommends that the Commission consider using the opt-in list for developing the market when the natural gas industry is restructured.

The CEC favors the use of bill inserts to disseminate information regarding a customer's rights to control access to their energy usage and other elements that appear in their utility accounts. The same insert could also be used to solicit participation of consumers in the opt-in database.

Prior to the release of the opt-in list, the CEC recommends that the entities who are authorized to receive the information be required to agree that they will not disseminate any portion of the list to other entities or to use the information for purposes other than the marketing of electricity or related services. The CEC believes that the agreement should clearly specify the authorized and unauthorized uses for the opt-in list, and the penalties for unauthorized use.

The CEC also recommends that the CEP focus groups address consumer privacy and confidentiality issues. These groups could address the opt-in list as well as the opt-out list.

d. Responses

TURN and UCAN generally support the CEC's comments and find merit in the CEC's recommendation that the opt-in list be linked to other consumer

education and consumer protection activities. They also agree with the CEC that the cost of the opt-in database should be borne fairly by all of the entities offering services, rather than by consumers. TURN and UCAN recommend that the Commission authorize the UDCs to track the opt-in costs, and consider the recovery of these costs at a later date.

TURN and UCAN question the UDCs' proposal to out-source the design and implementation of the opt-in database. TURN and UCAN believe that some of the activities can be performed more effectively by the UDCs.

PG&E, SDG&E, and Edison filed separate responses which oppose several of the CEC's proposals. The UDCs oppose the CEC's proposal to expand the roles of the CEP and EET. They contend that the original intent of the opt-in database was only to create a list of customers who wanted to receive information from the ESPs. The opt-in database was not intended to expand the activities of the CEP and the EET along the lines suggested by the CEC.

The UDCs also oppose the CEC's suggestion that there should be a periodic updating of the opt-in database. They contend that there is no basis to justify any updates. If periodic updates are required, the UDCs contend that the ESPs should pay for the cost of developing and disseminating the updates.

SDG&E appears to be opposed to combining a solicitation for both the opt-in list and the opt-out list, while Edison recognizes that combining both lists may be appropriate if the Commission manages the process and usage information is not released. PG&E is concerned that involving the UDCs in implementing the opt-out list may be viewed by some as a conflict of interest on the part of the UDCs or as an opportunity for the UDCs to impede competition.

The UDCs generally favor limiting the release of information to only the customer's name, address, and telephone number. PG&E and Edison point out that the inclusion of a customer's account number and the universal node identifier number would make it easier for someone to submit a fraudulent DASR.

PG&E and Edison agree with the CEC that distributing the opt-in list to energy efficiency providers has merit. However, Edison points out that since

those kinds of entities are not subject to the control of the Commission, it has no authority over them should they misuse the opt-in list. PG&E supports access to the opt-in list by renewable energy or energy efficiency providers so long as the Commission has a process for determining which providers qualify as renewable energy or energy efficiency providers.

The CEC responded to the UDCs' proposals. The CEC asserts that the UDC proposal does not recognize the need for unbiased information and education about customer privacy and confidential information.

The CEC agrees with the UDCs that a bill insert is preferable to direct mail. However, the CEC believes that the bill insert solicitation for the opt-in database should be linked to the customer education effort regarding privacy and confidential information.

The CEC also disagrees with the UDCs that a survey of the demand for the opt-in database should be the deciding factor as to whether the opt-in database should be implemented. The CEC contends that since the ESPs have no way of knowing in advance how many and what kinds of customers will be included in the opt-in database, the ESPs will be reluctant to indicate whether they will purchase the opt-in list.

The CEC agrees that ESPs should be charged for the opt-in list. However, the CEC contends that the price paid by the ESPs for this list should not have to recover all of the costs. Instead, the price should be kept affordable for even the smallest ESPs.

The CEC agrees that the use of an outside vendor is a workable approach for processing customer responses, compiling the data, and disseminating the opt-in list to the ESPs. The vendor could also be used to process customer responses to the opt-out list, and to disseminate that list to the ESPs.

e. Discussion

We address several preliminary issues that affect the design of the opt-in database.

We do not believe it is necessary to disseminate information to consumers regarding their rights over their energy usage data and other related utility account information. We have already adopted existing protections which require a consumer to consent in writing before such information can be released to an ESP. (D.97-10-031, pp. 13-14.) In addition, customer usage data is made available to an ESP when the customer consents to a switch to a new provider. (D.97-10-087, App. A, Section C.(3)(d).) Thus, it is not necessary for the CEP and the EET to include these issues in their activities. Similarly, we decline to adopt the CEC's suggestion that the CEP's focus groups address consumer privacy and confidentiality issues.

We do not agree with the CEC that the opt-in list should be more than a one-time solicitation. Not only will periodic updating increase the cost of compiling and disseminating the data, but ESPs and electric corporations are likely to experience diminishing returns with each updated solicitation. If the opt-in database is to be created, it should be for only the initial round of solicitations. The issue of the use of an opt-in list for the restructuring of the natural gas industry should be raised in that proceeding.

The only entities who should be able to purchase the opt-in list at this time are registered ESPs in good standing, public agencies, and electrical corporations. We defer consideration of the CEC's proposal that energy efficiency providers be able to obtain the opt-in list pending the results of a solicitation of energy efficiency provider interest. If there is sufficient interest on the part of the energy efficiency providers, the Commission must decide who qualifies as an energy efficiency provider, and ensure that such entities do not misuse the opt-in list.

We do not believe that a customer's usage information should be disclosed as part of the opt-in list. This will simplify the solicitation process since customers who want to be on the list will not have to include their account information on the response card. In addition, the UDCs will not have to coordinate the transfer of usage information to the ESPs. Usage information can be obtained through the process that we established in D.97-05-040 and D.97-10-031 regarding customer-specific data. The only information that the opt-in list should disclose is the consumer's name, the

mailing address, and the telephone number if the consumer elects to release his or her number.

Before proceeding with the design and implementation of the opt-in list, the cost of developing and disseminating the opt-in database needs to be decided. Although the UDCs contend that the costs of the opt-in list should be borne by the ESPs, the UDCs or their affiliates may also use the list if they decide to market outside their current service territory. We therefore conclude that the cost of the opt-in database should be shared equally by all those who may benefit from the purchase of such a database. If the opt-in database goes forward, the UDCs are authorized to track the costs associated with the opt-in database. We decline to authorize the UDCs to include these costs as part of their Section 376 costs at this time. Instead, the proceeds from the sale of the opt-in list should be used to offset the costs that the UDCs may incur in the design and implementation of the opt-in database.

As pointed out by the UDCs, given the low interest in the non-confidential database that was established pursuant to D.97-10-031, we should first determine how many ESPs, public agencies, electrical corporations, and energy efficiency providers are interested in purchasing the opt-in database and at what cost. By assessing the demand for the opt-in list beforehand, we avoid the problem of designing and implementing an opt-in database in which only a handful of entities have an interest in purchasing.²⁸ If there is sufficient interest and the cost of developing such a list can be substantially or totally recovered, then the Commission should proceed with the design and implementation of the opt-in database. If little or no interest is expressed, then the Commission should terminate the idea of an opt-in database. Those ESPs, public agencies, electrical corporations, and energy efficiency providers who are interested in purchasing the opt-in database should send a letter to the attention of: Energy Division - Opt-In List, 505 Van Ness Avenue, 4th Floor, San Francisco, CA 94102. The letter should indicate how much they would be willing to pay

²⁸ The UDCs estimate the cost of developing the opt-in database at \$430,000 to \$3.5 million.

for the list. The letters should be mailed to the Energy Division no later than 20 days from today's date.²⁹ The Energy Division shall be responsible for reviewing and compiling the responses, and to make a recommendation to the Commissioners assigned to direct access (assigned Commissioners) as to whether the opt-in database should be pursued. The assigned Commissioners are delegated the responsibility to decide whether or not to proceed with the opt-in database.

If the opt-in database is pursued, the use of a bill insert appears to be the most cost-effective method of making consumers aware of this opportunity. However, there are practical issues of whether the staff has the resources to handle and process the incoming mail or whether such a task could be contracted outside this agency. The EET could also play a role in disseminating information about the opt-in list or providing advice on how to best disseminate information about the opt-in list. Should there be a strong interest in the opt-in database, the assigned Commissioners shall determine the most appropriate means of how consumers can be made aware of the opt-in opportunity.

The bill insert should inform consumers about the purpose of the opt-in list, and how a consumer can elect to be included on the list. The bill insert needs to make clear that a consumer does not have to do anything. The bill insert should also inform consumers that ESPs and electric corporations may still try to market to them by obtaining their name and address through another mailing list, or that the consumer may be contacted by telephone unless the consumer is included on the opt-out list.

If the assigned Commissioners agree to proceed with the design and implementation of the opt-in database, then the Energy Division is directed to design the bill insert and response card as discussed below. The Energy Division shall determine whether the compilation, reproduction, dissemination, and cost recovery of the opt-in database should be done by the Commission staff, or if those responsibilities should be handled by the UDCs.

²⁹ The ALJ ruling that is to be mailed to the ESPs should advise the ESPs of this.

Prior to the dissemination of any opt-in list, we will require that all ESPs and electric corporations sign an agreement that they will use the opt-in list only for the marketing of electricity services, and that any other use, sale, release or disclosure of any of the information contained in the opt-in list is prohibited. A similar notation shall also appear at the front of the opt-in list. The signing of such an agreement is consistent with the confidentiality provisions of Section 394.4(a).

2. Opt-out List

Section 394.7 provides that the Commission is to “maintain a list of residential and small commercial customers who do not wish to be solicited by telephone, by an electric corporation, marketer, broker, or aggregator for electric service, to subscribe to or change their electric service provider.” We refer to this as the “opt-out” list . Others have referred to it as the “don’t call me” list. This list is to be updated periodically, at least quarterly.

Section 394.7(c) prohibits electric corporations and ESPs from soliciting by telephone any customer on the opt-out list. Any electric corporation or ESP which solicits any customer on the list more than once shall be liable to the customer for \$25 for each such contact.

Section 394.7(b) states that the opt-out list “shall be made accessible electronically from the commission to any party regulated as an electric corporation or registered at the commission as an electric marketer, broker, or aggregator of electric service. The electronic access requirement raises several issues.

The first issue is how this information is to be made available. If the Legislature intended for the Commission to allow ESPs to access the opt-out list over the Internet, practical problems arise. These problems involve the development of a database that can be easily downloaded by ESPs. If a large number of customers elect to be on the opt-out list, the database could include well in excess of one million customer names. The size of such a database may prevent the data from being downloaded easily and in a short period of time. Also, the frequent updating of such a list would compound the downloading issue, since ESPs would have to continually update to avoid calling recently added names to the opt-out list.

If Internet access is contemplated by the Legislature, privacy and security issues are raised as well. Since only registered ESPs and electric corporations would have access to this information, the Commission would need to develop a secure system of allowing electronic access to the opt-out list. Such a requirement means that the staff will need time to analyze existing software and hardware constraints and to resolve those problems before allowing such access to take place.

We will direct the CSD, in conjunction with the Energy Division, to work with the Information Resources Branch of the Commission to look into the feasibility of providing a secure, on-line database containing the information of those customers who do not want to be called. Input from interested stakeholders on this issue would be useful as well. Parties who are interested in this issue may submit a letter no later than April 27, 1998, containing their suggestions, to the Consumer Services Division-Data Access, 505 Van Ness Avenue, 2nd Floor, San Francisco, California 94102. A report prepared by CSD on the feasibility of such a project shall be delivered to the Commission within 90 days from today. In the interim, the CSD is directed to coordinate with the Energy Division CSD and the Information Resources Branch to provide the opt-out list on computer disks or CD-ROMs. This will alleviate the privacy and security issues for the time being.

The second issue is the confidential nature of the opt-out list. Consistent with Section 394.4(a), the information contained in the opt-out list shall remain confidential. The information in the opt-out list shall only be used for the purposes of Section 394.7(c). We shall prohibit all electrical corporations and ESPs from selling, releasing, or disclosing any of the information on the list to any third party. The staff shall require that anyone receiving a copy of the opt-out list sign an agreement that the list shall only be used to ensure that the customers whose names and telephone number appear on the list will not be marketed to by telephone. The agreement shall also state that any other use, sale, release or disclosure of any of the information contained in the opt-in database is prohibited. A similar notation shall also appear at the front of the opt-out list. The signing of such an agreement is consistent with the confidentiality provisions of Section 394.4(a). The failure to abide by this confidentiality provision can

lead to enforcement actions by the Commission or the Attorney General³⁰ against the electrical corporation or the ESP, or to civil suits brought pursuant to Section 396.

Even with the confidentiality protection, another concern that we have with the opt-out list is that some ESPs may use the list to sell their electric services through the mail. Section 394.7(c) only prohibits ESPs and electric corporations from contacting the persons on the opt-out list by telephone. Nothing in the statute prevents the entities from sending marketing materials to those on the list. Although ESPs and electric corporations have other means of obtaining the names and addresses of customers, the opt-out list provides the entities with a customized marketing list of potential customers. The effect of Section 394.7(c) creates the opportunity for entities to target those on the opt-out list by mail.

Although Section 394.7 does not preclude the opt-out list from being used for mail purposes, when that section is read in light of the confidentiality standards set forth in Section 394.4(a), we believe that the ESPs and electric corporations should be prohibited from using the opt-out list as a source for a mailing list. Accordingly, we will order that the opt-out list distributed to the ESPs and electric corporations contain only the customer's name, telephone number, the name of the street, and the city. Deleting the residence number from the distributed database will ensure that the ESPs and electric corporations cannot use the opt-out list as a source for a mailing list. In order for marketers to use the database as a mailing list, the residence number will need to be obtained from another source. The Legislature may want to consider amending Section 394.7 to address this concern.

The third issue involves the customer-supplied information. We believe that from a consumer protection perspective, end-use customers should be informed about the type of information that will be released if a customer's name appears on the opt-out list and how that information can be used. This is especially important for those

³⁰ Section 396(c) provides: "Nothing in this article shall abrogate any authority of the Attorney General to enforce existing law."

customers who have unlisted telephone numbers. If a customer with an unlisted number wants to be included on the opt-out list, the customer's unlisted number will then be made known to all registered ESPs and electric corporations.

In any materials describing the opt-out list, customers should be informed that if the customer has an unlisted number, the customer should weigh whether disclosing the unlisted number on the opt-out list is more of a concern than not being included on the opt-out list. By having the name included on the opt-out list, an ESP or electric corporation could deliberately or accidentally use or release the unlisted number to others. Any outreach activities which discuss the opt-out list should inform customers of this concern. In addition, consumers should be advised that if an electric corporation or ESP violates Section 394.7, that entity is subject to the penalties provided for in Section 394.7(c). The CSD could also include the opt-out list as part of the consumer advisories that are sent out to the media, or it could be integrated into other consumer outreach activities.

The fourth issue addresses the \$25 penalty for violating the provisions of Section 394.7(c). The \$25 amounts to essentially a fine or penalty for each violation. Since a fine is not, in our opinion, a "reparation," these types of actions should be filed in small claims court.

In reading Section 394.7(c), it would appear that the Legislature contemplated that the \$25 is owed upon the second contact in violation of this subdivision. However, that does not give the ESPs an excuse to call everyone on the opt-out list once without incurring the penalty. Section 394.7(c) is clear that once ESPs have the customer list, they "shall not solicit, by telephone, any customer on the list prepared pursuant to subdivision (a)." The CSD, in conjunction with the Energy Division, and the Information Resources Branch, shall develop procedures and systems to establish, update, and distribute the opt-out list. The updating of the list should be done, at a minimum, on a quarterly basis. Due to the lag time involved in updating the list, and the possibility that the customer who does not want to be bothered by such calls will be called during that interim period, the updating should take place on a fairly frequent basis, such as every month. We will leave the mechanics of updating the

database to the staff to develop. The Directors of the Energy Division and CSD shall report at the Commission meetings regarding the above efforts.

The reasonable costs of activities that the UDCs perform with respect to the opt-out list may be included in their Section 376 costs since the opt-out list is a requirement of SB 477.

VI. Section 394.5 Notice

In D.97-05-040 we discussed the notice required by Section 394(b), as added by AB 1890. All ESPs seeking to offer electrical services to residential and small commercial customers were ordered to provide the notice at the time of offer, and to abide by any future consumer protection rules to be adopted by the Commission. (D.97-05-040, pp. 60-63, 95.) Since Section 394(b) required the Commission to assist the ESPs in developing the notice, the Commission solicited comments from parties as to the type of notice that should be developed. Various comments and reply comments were filed in July of 1997.³¹

Section 394 was subsequently repealed by SB 477. The provisions which had been included in Section 394(b) found their way into Section 394.5 as added by SB 477.

Since the comments regarding the Section 394(b) notice were filed prior to the enactment of the provisions contained in SB 477, some of the comments called for a narrow reading of Section 394(b) which would limit the scope of the topics covered by the notice. Others suggested that a number of other topics be included in the notice. Some of the other topics mentioned in the comments were included as part of Section 394.5. With the passage of SB 477, we must ensure that the notice now contains all of the items required by Section 394.5. We have considered the comments in light of the changes brought about by Section 394.5.

³¹ Green Mountain Energy Resources L.L.C. (Green Mountain) filed a motion on July 22, 1997 to accept its reply comments one day out of time. The reply comments were attached to the motion. Green Mountain apparently miscounted the date the reply comments were due. No one has objected to the late-filing of Green Mountain's reply comments. We will grant the motion and direct the Docket Office to file the reply comments as of July 22, 1997.

Section 394.5(a) provides that the notice shall include the following seven elements:

- “(1) A clear description of the price, terms, and conditions of service, including:
 - (A) The price of electricity expressed in a format which makes it possible for residential and small commercial customers to compare and select among similar products and services on a standard basis. The commission shall adopt rules to implement this subdivision. The commission shall require disclosure of the total price of electricity on a cents-per-kilowatthour basis, including the costs of all electric services and charges regulated by the commission. The commission shall also require estimates of the total monthly bill for the electric service at varying consumption levels, including the costs of all electric services and charges regulated by the commission. In determining these rules, the commission may consider alternatives to the cent-per-kilowatthour disclosure if other information would provide the customer with sufficient information to compare among alternatives on a standard basis.
 - (B) Separate disclosure of all recurring and nonrecurring charges associated with the sale of electricity.
 - (C) If services other than electricity are offered, an itemization of the services and the charge or charges associated with each.
- “(2) An explanation of the applicability and amount of the competition transition charge, as determined pursuant to Sections 367 to 376, inclusive.
- “(3) A description of the potential customer's right to rescind the contract without fee or penalty as described in Section 395.
- “(4) An explanation of the customer's financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.
- “(5) The entity's registration number, if applicable.
- “(6) The right to change service providers upon written notice, including disclosure of any fees or penalties assessed by the supplier for early termination of a contract.

“(7) A description of the availability of low-income assistance programs for qualified customers and how customers can apply for these programs.”

Section 394.5(b) permits the Commission to suggest inclusion of additional information in the notice that it deems necessary to carry out the consumer protection purposes of Section 394.5.

Due to the list of the elements required in the notice, and the various interpretations that each ESP could give to each required element, ESPs should use the uniform notice format that we have attached as Appendix C. Appendix C is in a format that is in compliance with Section 394.5. The use of the Appendix C notice will assist consumers in being able to compare and select an ESP using a standard basis for evaluation. We have tried to write the notice in a manner which is easily understandable as required by Section 394.4(d). Accordingly, all registered ESPs may use Appendix C, including all specified passages, as the format for the Section 394.5 notice.³² ESPs are free to develop their own 394.5 notice; however, the required elements specified in 394.5(a) must be included. We address each of the individual required elements below.

The first required element of the notice is a clear description of the price, terms, and conditions of service. Section 394.5(a)(1)(A) requires that the price of electricity be in a format in which customers can compare and select among similar products and services. The price of electricity is described in Appendix C in the section entitled “Your Estimated Total Price Of Electricity.”

The CEC correctly points out that the “price of electricity” offered by the ESPs will fluctuate and will depend on the future prices of electricity. If an incorrect estimate of the electricity price is used in the notice, the CEC contends that it will be difficult to

³² The materials contained within “[]” in Appendix C denote that the ESP is to provide the necessary explanation or that the ESP is to use the applicable provision.

determine whether the ESP intended to be deceptive or was merely exercising reasonable forecasting judgment.

The intent behind Section 394.5(a)(1)(A) is to provide consumers with a useful method of comparing the price of electricity among different providers.³³ If the price of the electricity is not reasonably reflected in the notice, consumers will not be able to adequately compare costs and to select a provider based solely on cost considerations.

However, as the CEC noted, the price of electricity will undoubtedly fluctuate. Also, some of the pricing structures that are emerging as a result of the restructured electric industry tie the price of electricity as a discount or adder to the PX price. Generally speaking, the discount of the PX price occurs where an end-use customer wants a discount off of the price the customer could receive from the PX. The adder on top of the PX price is likely to occur because of the ESP's retailing costs. This type of pricing has been referred to as "PX credit minus pricing" (PX minus pricing) or "PX credit plus pricing" (PX plus pricing).

Several of the commenting parties suggested that the price of electricity be disclosed on a cents per kWh, and that an estimate of the monthly bill at various consumption levels be provided. Section 394.5(a)(1)(A) now requires that the total price of electricity be expressed on a cents-per-kWh basis. The total price of electricity is to include the costs of all related electric services and charges. That means the price is to include all recurring charges of both the ESP and the UDC. In addition, the total price of electricity would include the ESP's markup including any applicable local or state fees. Except as noted below, all of the notices required by Section 394.5 shall disclose the total price of electricity on a cents-per-kWh basis.

If a cents-per-kWh pricing is used, we will require that the electricity price contained in the notice be an actual price which the ESP will charge the customer.

³³ This intent is expressed in Section 391(g)(1) which states: "Electricity consumers be provided with sufficient and reliable information to be able to compare and select among products and services provided in the electricity market."

If pricing is on a cents-per-kWh basis, the notice shall also include an estimate of the total monthly bill at various consumption levels for residential and small commercial customers.

The last sentence of Section 394.5(a)(1)(A) states: “In determining these rules, the commission may consider alternatives to the cent-per-kilowatt-hour disclosure if other information would provide the customer with sufficient information to compare among alternatives on a standard basis.” In recognition of these new pricing structures, we will also permit the price disclosure to be on a PX minus or PX plus pricing basis. As noted in footnote 2, our use of the term “PX” in this decision includes both the PX established by AB 1890 and any other exchange that offers electric power at a published price. Alternatively, we shall also permit ESPs to peg their electricity price to any other publicly available published price index.

If pricing is on a PX-plus or PX-minus basis, or is pegged to any other published price, the Section 394.5 notice shall also include an estimate of the total monthly electricity bill at varying consumption levels as required by Section 394.5(a)(1)(A).

We decline to allow ESPs to publish in their Section 394.5 notices estimates of their prices that are not tied to a specific, discernible index such as the PX price. An estimated price is likely to lead to significant customer confusion, and creates the potential for misrepresentation or fraud by the ESP. In addition, if price estimates are permitted in the Section 394.5 notice, the estimate would be difficult to enforce if complaints arise regarding the charging of a price higher than the price estimate contained in the Section 394.5 notice.

Should other pricing methods develop in the marketplace, the Commission should also consider whether the new pricing method provides customers with sufficient information to allow customers to compare alternatives. The Energy Division shall be responsible for informing the Commission of any developing pricing methods. Should it be necessary, the Energy Division may also convene workshops to address other kinds of pricing methods and formats that may develop. The assigned Commissioners are delegated the authority to decide whether any new pricing methods

should be permitted in accordance with Section 394.5(a)(1)(A). Any future approval will be contained in an assigned Commissioners' ruling or ALJ ruling.

We also invite comment from market participants as to how prices can be expressed in the Section 394.5 notice in other ways that provide consumers with sufficient information to compare alternatives while at the same time protecting consumers against misleading offers. Such comments shall be filed in the Docket Office and served upon the service list within 60 days from today. Responses to those comments may be filed within 80 days from today. Should the Energy Division deem it necessary, a workshop may be held to address the comments with a subsequent workshop report to the Commission.

Section 394.5(a)(1)(B) requires that there be a separate disclosure of all recurring and nonrecurring charges associated with the sale of electricity. Appendix C contains an area where the ESP is to insert a description and the amount of each recurring and nonrecurring charge that the customer may be responsible for. In order that these charges are accurately represented on the notice, the UDCs are directed to cooperate with the ESPs to ensure that all of the UDC's charges are accurately reflected on the notice.³⁴

The notice is to include an itemization of the charges for services other than electricity, if an ESP offers such services. (P.U. Code Section 394.5(a)(1)(C).) These other kinds of services could include such things as the sale of direct access meters, meter reading services, or other kinds of services. Since each ESP will be offering different products and services, we should not specify what the notice should say about these other kinds of services. However, should such services be offered to residential or small commercial customers, the ESP shall disclose that information in the notice.

³⁴ The UDC's recurring charges would consist at a minimum of the transmission and distribution charge and the non-bypassable charges authorized in AB 1890. The UDC's non-recurring charges could include such things as a disconnect and a reconnection fee.

Should the ESP change any of the price, terms or conditions of service, we shall require the ESP to provide the customer with a written notice of such a change at least 30 days prior to the effective date of such a change. In addition, we shall require that the change notices be included as part of the standard service plan filing. These requirements are consistent with the Legislature's intent that "Consumers be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive" (Section 391(g)(2)) and with our authority in Section 394.4(h) to adopt additional consumer protection standards which are in the public interest. Any change in a customer's price, terms or condition of service is something that a customer should be informed about. The requirement that all change notices are to be included as part of the standard service plan filing will assist the Commission staff in resolving any complaints that may arise over a billing discrepancy.

The method in which the written notice of the change is to be provided to the customer shall be left to the ESP. Among others, methods for disseminating the notice could include a notice in the monthly bill preceding the change, in a separate written notice, or a new Section 394.5 notice.

If an ESP's service offering to a customer provides that the rate, terms or conditions of service are subject to change, that is a condition which must be noted on the Section 394.5 notice.

The second required element on the notice is an explanation of the competition transition charge and the amount of that charge. Some of the parties who commented regarding the form of the notice stated that the notice should also inform customers that they are obligated to pay other non-bypassable charges as well. We agree that the notice should include a description of the other non-bypassable charges that residential and small commercial customers are obligated to pay. All notices should include the language contained in Appendix C in the section entitled "Description Of Legislatively Mandated Charges." In addition to the description of the non-bypassable charges, these recurring charges should be reflected in the UDC's recurring charges in the section entitled "Your Estimated Total Price Of Electricity."

The third required element of the notice is a description of the potential customer's right to rescind the contract "without fee or penalty as described in Section 395." (P.U. Code Section 394.5(a)(3).) We first note that Section 395 does not state that a customer can rescind the contract without imposition of a cancellation fee or penalty. However, we believe that such a right is implied in the "right to cancel" language of Section 395. In addition, when Section 395 is read in conjunction with Section 394.5(a)(3), the intent of the Legislature is clear that no fees or penalties shall be imposed on the customer by the ESP if the customer exercises his or her right to cancel within the time period provided for in Section 395.

Another issue raised by Section 395 is what happens if no written agreement is ever signed. That is, the transaction occurs over the telephone, including the subsequent verification. In that situation, the direct access tariff provision provides that the DASR is not submitted until three days after the verification has been performed, and that if a customer cancels service pursuant to Section 395 that a DASR shall not be submitted. (D.97-10-087, App. A, Section E.(6).) Thus, if the transaction occurs by telephone, the customer has three days from the date of the verification to cancel the switch.

In the context of the right to cancel provision, the third party verification process, and the Section 394.5 notice, the customer should have to right to cancel without penalty three days after the third party verification, or three days after receipt of the Section 394.5 notice, whichever is later. Such timing preserves the right of a consumer to cancel service without a penalty in accordance with Section 395. The direct access tariff provision in Sections E.(6) and G of Appendix A of D.97-10-087 may need revisions to reflect the fact that a DASR should not be submitted until the later of the two dates.

We also note that Section E.(6)(a) of Appendix A to D.97-10-087 contains an inconsistency with what is provided for in Section 395(a). That subdivision allows a customer the right to cancel a contract "until midnight of the third business day after the day on which the buyer signs...." Section E.(6)(a) does not describe that the last day

to cancel, the third day, must be a business day. The UDCs shall be directed to correct this in their direct access tariff.

All notices should contain the language set forth in the section entitled “Notice Of Your Right To Cancel” of Appendix C.

The fourth required element is an explanation of the customer’s financial obligations, as well as a description of the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints. (P.U. Code Section 394.5(a)(4).) We interpret the “explanation of the customer’s financial obligations” to mean an explanation of all financial obligations the customer will face if the customer signs up with the ESP for the provisioning of electricity. These financial obligations include all fees associated with signing up the customer, the monthly financial obligation of the customer, any fees associated with the termination of service by the customer or by the ESP or the UDC, and any fees to reconnect service. The explanation of the customer’s financial obligations should be set forth in the section of the notice entitled “Description Of Terms And Conditions Of Service.” This section should also describe all of the pertinent non-financial terms and conditions of service related to the sale of electricity.

The “Description Of Terms And Conditions Of Service” also includes a description of the procedures regarding past due payments and discontinuance of service as required by Section 394.5(a)(4). A description of the procedures regarding billing disputes and service complaints should appear in the section of the notice entitled “Complaint Procedures.” The specific language regarding these four topics is based upon the tariff provisions that we adopted in Appendix A of D.97-10-087, and the complaint process described in this decision.

The fifth required element of the notice is the entity’s registration number. We have included the registration number as part of the introduction to the notice.

The sixth required element is to inform customers of their right to change service providers. In addition to Section 394.5(a)(6), the customer’s right to change service providers is expressed in several other code sections. Section 330(k) provides that it is

essential to “Permit all customers to choose from among competing suppliers of electric power.” Among the minimum standards the Commission is to adopt is the following:

“(c) Change in providers: Upon adequate notice supplied by a registered entity to the electric corporation or local publicly owned electric utility providing physical delivery service, customers who are eligible for direct access may change their energy supplier. Energy suppliers may charge for such a change, provided that any fee or penalty charged by the supplier associated with early termination of service, shall be disclosed in that contract or applicable tariff.” (Section 394.4(c).)

It is apparent in reading Section 394.4(c) that an ESP can enter into a contract with a customer for a fixed period of time. However, when Sections 330(k), 394.4(c) and 394.5(a)(6) are read together in context, it appears that the Legislature intended that regardless of the term of the contract, a residential or small commercial customer may terminate the contract early if adequate notice is provided to the ESP and UDC, and the customer is aware of the fees or penalties associated with the early termination of service. The section entitled “Your Right To Choose” in Appendix C reflects the right of a residential or small commercial customer to terminate a contract early in order to switch to a new provider. Any applicable early termination fees or penalties should be included in the notice under the section entitled “Your Estimated Total Price Of Electricity” and should be discussed in the “Description Of Terms And Conditions Of Service.”

The seventh required element is a description of the availability of low-income assistance programs and how customers can apply for these programs. These programs include the California Alternate Rates For Energy (CARE) program, as well as various energy efficiency programs. Prior to the restructuring of the electric industry, these programs were administered by the incumbent electrical corporations. In D.97-02-014, we took steps to have the Low Income Governing Board (LIGB) oversee these programs so that the ESPs could become involved in these programs as well. At the present time, the LIGB is still developing the framework necessary to oversee these programs. Thus, at the current time, the CARE and energy efficiency programs are still being operated by the electrical corporations. Pursuant to Section 394.5(a)(7), we will require the notice to include a paragraph regarding these programs.

When the LIGB takes over the oversight and administration of these programs, the manner in which customers can apply for these programs will change as well. The Energy Division shall be responsible for revising this section of the uniform notice format when that occurs, and for informing all registered ESPs of the change.

ORA suggested in its comments regarding the notice that customers be informed of the ESP's generation resource mix. In addition, in the comments regarding the DAWG workshop reports on consumer protection issues, several parties expressed concern about how consumers should be educated about environmentally friendly generation sources and whether electricity providers should be permitted to claim that their electricity came from environmentally friendly sources.

Section 398.4 was recently added to the Public Utilities Code by SB 1305. (Stats. 1997, ch. 796.) That section requires every retail supplier that makes an offering to sell electricity that is consumed in California to disclose the supplier's electricity sources to potential and actual end-use consumers. The CEC is considering adoption of regulations that will specify the format for electricity source disclosure. As part of the required Section 394.5 notice, ESPs should include the section entitled "Disclosure Of Electricity Source." This portion of the notice will advise interested consumers that they will receive quarterly disclosures of projected electricity sources and an annual statement disclosing the retail supplier's actual sources for the previous year.

Since the Section 394.5 notice is likely to be fairly lengthy, a summary of the key provisions regarding the price, terms and conditions of service should appear near the beginning of any Section 394.5 notice. This summary page should include, at a minimum, the price disclosure, the length of the contract if any, any early termination fees, and the right to cancel the contract under Section 395. A sample summary appears on the first page of Appendix C.

Some of the parties who commented regarding the format of the notice suggested that the ESPs should be free to develop the required notice. We agree that the ESPs should have flexibility to develop the notice. Appendix C provides that flexibility. ESPs are free to use Appendix C and to add information to Appendix C so long as the

information is not misleading or untrue, and it pertains to the price, terms, and conditions of service. Or, the ESPs can develop their own notice.

The format of Appendix C may have to change in the future to better reflect how ESPs are actually designing and using the Section 394.5 notice. To preserve that flexibility, the Commissioners assigned to direct access are delegated the authority to make subsequent changes to Appendix C.

The details of the required format of the Section 394.5 notice were not made known until today. We realize that it will take some time before the ESPs can comply with the requirements and other suggestions discussed above. All ESPs shall incorporate all the required elements within 45 days from today. In the interim, the ESPs may continue to provide potential customers with a notice that complies with Section 394.5.³⁵

Any ESPs registering after today shall be required to deliver a copy of its Section 394.5 notice to the Energy Division-ESP Registration Unit, prior to the solicitation of any residential or small commercial customers, or upon the first required filing of the ESP's standard service plan filing, whichever is earlier.

All ESPs who have been issued a registration number on or before today's date shall submit their Section 394.5 notice, in a format that is consistent with this decision, to the Energy Division when the first residential customer or small commercial customer is presented with this revised notice, or as part of the ESP's standard service plan filing that is due on July 1, 1998, whichever is earlier. If an ESP has already entered into an agreement with a residential or small commercial customer, the ESP shall submit the Section 394.5 notice to the Energy Division within 15 days of today's date.

³⁵ The Commission stated in D.97-12-090 at page 24 that all registered ESPs are to follow the statutory provisions of Section 394.5 until such time further clarifying details are adopted by the Commission.

The Commissioners assigned to direct access are delegated the authority to suggest inclusion of additional information on the Section 394.5 notice if the assigned Commissioners deem the revisions are necessary for consumer protection. (PU Code Section 394.5(b).) Any changes to the notice will be conveyed to all registered ESPs and any prospective ESPs by the Energy Division and in a ruling.

The other issue raised by Section 394.5 is when the notice should be made available to prospective customers. Section 394.5(a) states that this notice is to be made available to a potential customer “prior to the commencement of service.” We interpret that phrase to mean that the ESP shall deliver the notice to the potential customer prior to any signing of any service agreement or contract and the initiation of a DASR on the customer’s behalf. Such a requirement makes sense because the notice is to inform the “potential customer” of the price, terms, and conditions of service. The potential customer should be provided with the opportunity to review the price, terms, and conditions of service before agreeing to switch to a different electric provider.

We shall also require that the Section 394.5 notice be made available to any residential or small commercial customer upon request. By making the notice available to others, consumers can compare the service offerings of different ESPs using a standard format.

VII. Complaint Process

A. Complaint Procedures

Several parties commented on the type of complaint procedures that the Commission should establish. Those comments were submitted prior to the addition of Section 394.2 to the Code by SB 477.

Some of the parties believe that the Commission should establish a dispute resolution process to handle customer complaints with ESPs. The parties in favor of such a process believe that consumers should be able to pursue such a process at no cost or for very little cost, and that such a process should be readily accessible to small consumers.

Other parties contend that the Commission has no jurisdiction over ESPs to fully adjudicate a complaint. Instead, they contend that the Commission has only limited authority to informally resolve any complaints against an ESP.

Under AB 1890, the Commission was given the authority to “accept, compile, and help resolve consumer complaints regarding entities offering electrical service that are required to be registered....” (P.U. Code Section 394(c).) This subdivision was repealed by SB 477 and added as part of Section 394.2. Section 394.2 provides in pertinent part:

- “(a) The commission shall accept, compile, and attempt to informally resolve consumer complaints regarding registered entities. Where the commission reasonably suspects a pattern of customer abuses, the commission may, on its own motion, initiate investigations into the activities of entities offering electrical service. ...
- “(b) Notwithstanding other provisions, residential and small commercial customers shall have the option to proceed with a complaint against a registered entity either through an action filed in the judicial court system or through a complaint filed with the commission. A customer who elects either the judicial or commission remedies may not raise the same claim in both forums. The commission shall have the authority to accept, compile, and resolve residential, and small commercial consumer complaints, including the authority to award reparations. The commission's authority in these complaint proceedings is limited to adjudication of complaints regarding residential and small commercial electric service provided by a registered entity and shall not be expanded to include either an award of any other damages or regulation of the rates or charges of the registered entity. However, a person or entity which takes a conflict to the commission shall not be precluded from pursuing an appeal of the decision through the courts as provided for in law.
- “(c) In connection with customer complaints or commission investigations into customer abuses, registered entities shall provide the commission access to their accounts, books, papers, and documents related to California transactions as described in Sections 313 and 314, provided the information is relevant to the complaint or investigation.
- “(d) No registered entity may discontinue service to a customer for a disputed amount if that customer has filed a complaint that is pending with the commission, and that customer has paid the disputed amount into an escrow account.”

In order to determine the extent of the Commission's jurisdiction over a complaint submitted or filed against an ESP, we must analyze subdivisions (a) and (b) of Section 394.2. Subdivision (a) states in part that the Commission "shall accept, compile, and attempt to informally resolve consumer complaints regarding registered entities." Subdivision (b) provides that residential and small commercial customers have the option of proceeding with a complaint against a registered ESP by filing an action in the courts or through a complaint filed with the Commission. The customer, however, cannot raise the same claim in both forums. If the complaint is filed with the Commission, subdivision (b) provides that the "commission shall have the authority to accept, compile, and resolve" these types of complaints, "including the authority to award reparations."

We believe that the legislative intent in establishing subdivisions (a) and (b) of Section 394.2 was to allow the Commission to distinguish between two types of consumer complaints.

Under subdivision (a), the Commission will "attempt to informally resolve" all complaints involving ESPs. This informal resolution will include complaints regarding billing, as well as attempts to informally resolve complaints involving the reasonableness of the terms and conditions of service.

If this type of informal complaint is submitted to the Commission, Section 394.2(a) provides the Commission with the flexibility to pursue an alternative dispute resolution process. This is in addition to the informal process that the Consumer Affairs Branch currently uses to try to resolve customer complaints against regulated utilities. These informal processes would avoid the necessity of having to formally file these types of complaints and to hold formal hearings that could only result in a non-binding recommendation. The Director of the Energy Division and the Chief ALJ shall develop recommended procedures within 90 days to address informal processes to handle these kinds of complaints. Such procedures can be established by way of a Commission resolution.

The Commission is also authorized to handle formal complaints under subdivision (b) of Section 394.2. Subdivision (b) confers upon the Commission the

authority to accept, compile, and resolve complaints against registered ESPs by residential and small commercial customers. The Commission is empowered under this subdivision to adjudicate complaints that do not involve the reasonableness of the rates, charges, or terms and conditions of service. For example, the Commission can adjudicate a complaint alleging that the ESP is not in compliance with a statute or Commission decision pertaining to direct access. Under such circumstances, the Commission has the authority to resolve the underlying complaint and to award reparations. The Commission also has the authority to resolve complaints that involve the rate, charge, or terms and conditions of service when, for example, the complainant alleges that the ESP has charged the customer a higher price for electricity than what was promised to the customer or what the customer agreed to. Essentially, the Commission retains full authority to adjudicate a complaint which involves deceptive, unfair or abusive marketing practices.

This interpretation is supported by the statements in subdivision (b) that although a customer has the option of proceeding with a court action or the filing of a complaint with the Commission, the customer “may not raise the same claim in both forums,”³⁶ and that “notwithstanding other provisions” such as Section 394(e), the customer has the option of deciding where to file its complaint.

SB 477 does not address the situation where an end-use residential or small commercial customer has a complaint against a non-registered ESP. Section 394.2 does not confer any authority over the Commission to handle that type of complaint. However, the Legislature has given the Commission the authority to open an investigation into the “activities of entities offering electrical service” if the Commission suspects a pattern of customer abuses. (P.U. Code Section 394.2(a).) This authority does not limit the Commission to just an investigation of registered ESPs. Instead, we

³⁶ The second sentence of Section 394.2(b) seems to suggest that a customer could file two separate complaints, one with the Commission and another in court, so long as the same claim is not raised in both forums. Our decision today does not address whether that is what the Legislature intended.

interpret the phrase “activities of entities offering electrical service” to mean that the Commission can open investigations into anyone offering electrical service, including registered and unregistered ESPs, as well as those ESPs who offer services to large commercial and industrial customers. This broad investigative authority is appropriate to ensure that all classes of customers are adequately protected in the restructured electric environment.

If the investigation concerns a registered ESP, it could lead to the suspension or revocation of the ESP’s registration, or it could lead to civil or criminal actions as provided for in Section 394.25. In lieu of opening an investigation, the Commission could take direct enforcement action against registered ESPs as provided for in Section 394.25. Any investigation into the activities of non-registered ESPs or ESPs who serve large commercial or industrial customers could result in civil or criminal actions as well as provided for in the existing statutes.

In addition to an investigation, the Legislature intended that complaints against ESPs who market electric services to large commercial and industrial customers may be pursued in the courts. This is evident from the Legislature’s declaration in Section 391(d) that “Larger commercial and industrial customers are sophisticated energy consumers that have adequate civil remedies and are adequately protected by existing commercial law.” (Emphasis added.)

In order for the Commission to stay abreast of the complaints against non-registered ESPs marketing to residential and small commercial customers, and the activities of ESPs who market to the larger commercial and industrial customers, we will direct the Docket Office to refer these kinds of complaints to the CSD. This will allow the staff to be made aware of the activities of ESPs who may be engaging in suspected customer abuses in violation of the Public Utilities Code and the decisions regarding the restructured electricity market. It will also allow the Commission to compile data about these other kinds of complaints. Should it be necessary, the CSD can recommend that an investigation be opened, or the Commission can pursue civil or criminal actions against the ESP being complained of.

Upon receipt of complaints involving non-registered ESPs, or ESPs who market to large commercial and industrial customers, the Docket Office shall send a letter to the complainant rejecting the complaint, and informing the complainant that the Commission has no jurisdiction over this type of complaint and that the complainant should seek relief in civil court. The letter should also advise the complainant that a copy of the complaint has been forwarded to the CSD to determine whether the Commission should pursue any civil or criminal actions against the entity. The ALJ Division and the CSD are directed to develop the necessary procedures to address the above procedures.

One of the issues raised by ORA is whether the Commission can require the ESPs to produce their records. This is partially answered by SB 477. If a customer complaint is filed with the Commission against a registered ESP, or if the Commission opens an investigation into customer abuses by a registered ESP, Section 394.2(c) specifically provides that the “registered entities shall provide the commission access to their accounts, books, papers, and documents related to California transactions as described in Sections 313 and 314, provided the information is relevant to the complaint or investigation.”

Section 394.2(c) does not address whether non-registered entities are obligated to provide the Commission with access to their documents when the Commission opens an investigation into the ESP in accordance with Section 394.2(a). Although there is no statutory requirement in SB 477 which directs non-registered ESPs to provide this kind of information, the Commission can obtain this information from these entities through the Commission’s subpoena power as provided for in Sections 311(a) and 312.

B. Billing Disputes And Continued Service

Section 394.2(d) provides that if a complaint is filed with the Commission against a registered ESP, the ESP is prohibited from discontinuing service to the customer over the disputed amount if the customer deposits the disputed amount into an escrow account. This prohibition codifies and reflects the tariff requirement that electrical corporations currently follow.

In D.97-05-040, we required that each registered ESP provide each potential customer at the time of offering the electrical service, the notice described in Section 394 as added by AB 1890. The provisions in Section 394 were subsequently incorporated into Section 394.5 as added by SB 477. Section 394.5(a)(4) specifically provides that the written notice include: “An explanation of the customer’s financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.” Thus, the written notice required by Section 394.5(a)(4) must inform potential customers of the procedures regarding billing disputes, including the procedure provided for in Section 394.2(d). Appendix C contains such a provision.

The issue also arises as to whether the customer bill rendered by a registered ESP should contain a notice that for a customer to avoid discontinuance of service for a disputed amount, the customer should deposit the disputed amount with the Commission. Section 394.4(e) provides that the bills of registered ESPs are to “have a standard bill format, as determined by the commission...” The subdivision also provides, “A registered entity contacted by a customer regarding a billing dispute shall advise the customer at the time of the initial contact that the customer may file a complaint with the commission if its dispute is not satisfactorily resolved by the registered entity.”

Since one of the purposes of AB 1890 and SB 477 is to ensure that residential and small commercial consumers are provided with mechanisms to protect themselves from marketing practices that are unfair or abusive, we will require registered ESPs to include on all their customer bills a notice that informs customers of their rights under Section 394.2(d). This notice is appropriate in light of the statutory provisions. The Legislature in Section 394.4(e) left it up to the Commission to determine the standard bill format, and stated in Section 394.4(h) that the Commission may adopt “additional residential and small commercial consumer protection standards which are in the public interest.” We conclude that such a notice provision is in the public interest because it will inform residential and small commercial customers that a registered ESP may not discontinue service over a disputed amount if the customer files a complaint

with the Commission, and the customer has paid the disputed amount into an escrow account.

PG&E points out in its comments to the draft decision that the procedure set forth in Section 394.2(d) differs from what was adopted in Sections O.(1)(h) and O.(3)(e) of Appendix A of D.97-10-087. The UDCs shall conform the two direct access tariff provisions to Section 394.2(d) by an advice letter by including the following. For Section O.(1)(h), the following shall be inserted as the last sentence:

“However, no registered ESP may discontinue service to a small customer for a disputed amount if that small customer has filed a complaint with the CPUC, and that small customer has paid the disputed amount into an escrow account.”

For Section O.(3)(e), the following sentence shall be added at the end of that paragraph:

“However, no registered ESP may discontinue service to a small customer for a disputed amount if that small customer has filed a complaint with the CPUC, and that small customer has paid the disputed amount into an escrow account.”

VIII. Section 394.4 Minimum Standards

A. Introduction

SB 477 added Section 394.4. The introductory paragraph of that section states in pertinent part:

“Rules that implement the following minimum standards shall be adopted by the commission for registered entities offering electrical services to residential and small commercial customers”

Thus, the standards set forth in Section 394.4 apply to residential and small commercial customers.

As noted earlier, the Commission has already adopted a series of rules in other decisions which address some of the standards contained in Section 394.4. In the sections below, we elaborate on some of the standards and rules, or adopt rules for standards that we have not yet addressed.

B. Physical Disconnects And Reconnects

One of the minimum standards that the Commission is required to adopt concerns physical disconnects and reconnects. Section 394.4(b) provides in pertinent part:

“Only an electrical corporation ... that provides physical delivery service to the affected customer shall have the authority to physically disconnect or reconnect a customer from the transmission or distribution grid. Physical disconnection by electrical corporations subject to the commission’s jurisdiction shall occur only in accordance with protocols established by the commission.”

In prior decisions, we addressed the service disconnection and reconnection issue. Section 394.4(b) makes clear that only an electrical corporation can physically disconnect or reconnect a customer from the transmission or distribution grid. Although we did not express it in those terms, Section R of Appendix A of D.97-10-087 permits only the UDCs to disconnect and reconnect a customer if the customer fails to pay any amounts owed to the UDC. All ESPs shall ensure that they abide by this statutory provision, and the UDCs shall abide by the disconnection protocols that we adopted in D.97-10-087.

C. Standard Bill Format

One of the standards that the Commission is to adopt is a standard bill format for all bills. Section 394.4(e) states:

“(e) Billing: All bills shall have a standard bill format, as determined by the commission or the governing body, and shall contain sufficient detail for the customer to recalculate the bill for accuracy. Any late fees shall be separately stated. Each registered entity shall provide on all customer bills a phone number by which customers may contact the entity to report and resolve billing inquiries and complaints. A registered entity contacted by a customer regarding a billing dispute shall advise the customer at the time of the initial contact that the customer may file a complaint with the commission if its dispute is not satisfactorily resolved by the registered entity.”

The standard bill format is also discussed in Section 392(c). That subdivision states: “The standard bill format developed by the commission pursuant to subdivision (e) of Section 394.4 shall also apply to electrical corporations.”

Electrical corporations are required by Section 392(a)³⁷ to disclose the following components on its bill:

“(A) The total charges associated with transmission and distribution, including that portion comprising the research, environmental, and low income funds.

“(B) The total charges associated with generation, including the competition transition charge.”

In addition, the electrical corporations are to “provide conspicuous notice that if the customer elects to purchase electricity from another provider that customer will continue to be liable for payment of the competition transition charge.” (Section 392(a)(2).)

The provisions of Section 392(a), formerly Section 392(c), were discussed in D.97-05-040 at pages 63 and 64. The electrical corporations were ordered in that decision to ensure that their electrical bills contain the billing components and notice required by that section.

We also addressed billing format issues in D.97-12-090 at pages 23 and 24. We directed the UDCs to include a tariff requirement that “customer rights” language be included on the back of the electricity bill that is presented to the end-use customer. In addition, the Commission stated that all registered ESPs are expected to follow the provisions contained in Section 394.4(e).

The unbundling decision, D.97-08-056, also addressed bill format issues for the UDCs. Among other things, the Commission adopted the suggestion that the UDC’s bill also separately identify the following components: energy, transmission, distribution, CTC, public purpose programs and nuclear decommissioning costs. This separate identification of the bills is to be put in place no later than June 1, 1998.

All of the items mentioned above affect what the standard bill format should look like. In addition, certain billing information that currently appears in the electrical

³⁷ The provisions of Section 392(a) as added by SB 477 were originally contained in former Section 392(c) as added by AB 1890.

corporations' bills, should also appear on the bills of both the ESPs and the electrical corporations.

We first note that if the ESP is going to do consolidated billing, the ESP shall be responsible for ensuring that all of the charges that are required to appear on the UDC's bill also appear on the ESP's consolidated bill. Such a requirement is consistent with the goal expressed in D.97-08-056 that customers should be "entitled to information about the services and investments for which they are paying" and is also consistent with the Legislature's intent that the bill "shall contain sufficient detail for the customer to recalculate the bill for accuracy." (D.97-08-056, p. 52; PU Code Section 394.4(e).)

Second, the bill format for both ESPs and UDCs shall indicate the customer's name, account number, the electric meter number, the number of days in the billing cycle, and the electricity usage during that cycle expressed in kWh. To the extent possible, the bill should also include the prior meter read and the current meter read. This kind of meter and usage information will allow the customer to verify whether it was the customer's meter that was read, and to recalculate the cost of the electricity.

Third, the bill format shall include the charge for the cost of the electricity. In addition, the bill shall indicate the cost of the electricity on a cents-per-kilowatt hour basis. Both of these items enable a consumer to recalculate the price paid for electricity.

Fourth, the bill may contain a comparison for the current billing month and what was used by the same customer in the prior year at that same address. This shall be an optional format field. The usage information is beneficial to consumers because it allows them to compare their usage history and to take conservation measures should they believe it to be necessary. Having a usage history may be a marketing tool that ESPs and UDCs can use to promote their services. On the other hand, ESPs may want to tailor the bill to what the customer would like to see. By making this an optional format field, the ESPs retain that flexibility.

Fifth, the bill format shall include an area for other kinds of charges, and should be labeled as "Other Charges" or another appropriate description. This line item is to reflect the other kinds of charges associated with the sale of electricity. Should there be other charges, there should be a descriptive heading for each charge. These "Other

Charges” could include, for example, such things as any applicable taxes, deposits, returned check charges, or other kinds of charges.³⁸ Any late fees are to be separately stated on the bill as required by Section 394.4(e).

Sixth, as required by Section 394.4(e), the bill format of both the ESPs and the electrical corporations shall include a telephone number that customers may call for any billing inquiries or complaints, and shall include a description that a customer service number or telephone assistance number is available. Although we shall not require it, the area for the telephone number should also list the hours of operation so that customers will know when they can call. We also note that Section 394.4(e) requires that if a customer calls or contacts a registered ESP regarding a billing dispute, the ESP must inform the customer at that point of contact that the customer may file a complaint with the Commission if the dispute is not satisfactorily resolved by the ESP.

Seventh, we shall require the bills of both ESPs and electrical corporations to contain “customer rights” information. This type of information shall include, at a minimum: a description of when the bill is considered past due; the amount of deposit that can be requested; a summary of the complaint procedures as provided for in Section 394.2 and as interpreted in this decision; and that service cannot be discontinued over a billing dispute if the procedure set forth in Section 394.2(d) is followed. The ESPs and electrical corporations are free to add other kinds of customer rights information.

Eighth, the bill format shall include a date for the payment. This will ensure that customers know the date when the payment becomes due so that they can timely pay the amount due without incurring any late charge.

Ninth, should the ESP or the UDC offer billing for services that are unrelated to the sale of electricity, the bill for such services shall be in a separate section of the bill, although the total of those charges can be included as part of the calculation of the total

³⁸ If there are “Other Charges,” a description of those charges are to be included in the Section 394.5 notice.

bill. In order to allow customers to be able to “recalculate the bill for accuracy,” each non-energy related charge should be separately itemized with a descriptive heading. By requiring separate line items, a customer will be able to determine how much the customer was charged for each service.

In addition to the above-described line items, the ESP and electrical corporations are free to add a line item for the total charges, or line items for total current charges, previous balance, any payment received, and total amount due. The bill can also reflect other useful information that consumers may need to understand their bill or the services offered.

In recognition that some companies may be using different billing formats, all UDCs and ESPs shall have 60 days from today to comply with the above standard billing format.³⁹

D. Metering Issues

Section 394.4(f) provides that “[a]n electric customer shall have a reasonable opportunity to have its meter tested to ensure the reasonable accuracy of the meter.” The Commission is to decide who is responsible for the cost of that testing in service territories of entities that the Commission has jurisdiction over.

In D.97-10-087, the Commission adopted some tariff provisions regarding meter calibration and testing, and the testing of meter functions. In addition, the tariff provisions adopted in D.97-10-087 contain provisions that address billing adjustments for meter error and billing error. Those provisions also specifically reference the UDCs’ tariff provisions regarding meter error. (D.97-10-087, App. A, Sections H.(4), H.(5), N.(6).)

The problem that this Commission faces in implementing Section 394.4(f) is if a non-utility ESP maintains the meter since a non-utility ESP is not required to have its

³⁹ The standard bill format requirements discussed above shall not apply to master-meter customers. Billing format requirements for those customers will be considered in a future decision addressing master-meter and direct access issues.

tariffs approved by the Commission. One would expect that the customer's right to correct any billing or metering error with respect to a non-utility ESP maintained meter should closely parallel the provisions that the Commission adopted for the UDCs. If there are parallel provisions, then the party who pays for the testing should be in accordance with the provisions of Section H.(4) of Appendix A of D.97-10-087.

In a situation where a customer suspects that an error has occurred with a non-utility ESP maintained meter, but the ESP is not cooperating to resolve the matter, or the customer's contract with the ESP does not address metering or billing error, then the customer may submit a complaint with the Commission pursuant to Section 394.2(a). In that proceeding, we can order the ESP to test the meter, or should it be necessary, the Commission can order the UDC to test the meter in question. If the meter is within the Commission-approved standards, the customer should pay for the cost of the testing.

In the comments to the two DAWG reports, some of the parties expressed concern about the sale or use of tampered or defective meters, or the intentional diversion of electricity to an alternate meter with the intent of billing customers for higher than actual usage. We previously addressed these kinds of metering issues in D.97-10-087 and in D.97-12-048. We believe that the requirements of those two decisions are sufficient to protect consumers and to ensure that the meters are accurately reporting actual consumption.

One of the other metering issues raised in the comments to the DAWG reports was whether to permit the installation of service-limiting meters as a means of reducing payment delinquencies and collection costs. A service-limiting meter would cut off service to a customer after reaching a certain predetermined consumption level. We do not believe that the installation of these kinds of meters is needed, nor do we authorize these kinds of meters to be installed in this decision. We have adopted procedures which allow the UDCs to disconnect service to a customer if the customer fails to pay any portion of the electricity bill. These disconnection procedures are sufficient to ensure that customers pay their electricity bills in a timely manner.

E. Customer Deposits

Section 394.4(g) provides that registered entities may require deposits from their residential and small commercial customers before commencing service. However, the deposit cannot be more than the estimated bill of the customer for a three-month period.

As part of the written notice required by Section 394.5, ESPs are to include an explanation of the customer's financial obligations. The term "financial obligations" includes an explanation of any deposit requirements. If an advance deposit is required by the ESP, we will require that the Section 394.5 notice contain an explanation of the ESP's deposit requirement. In addition, the notice should also state the following:

"If an advance deposit is required, the law provides that the deposit cannot be more than your estimated bill for a three-month period."

Appendix C of this decision reflects the above language.

Some of the parties commented that the requirement of a deposit should not be used as a means of discriminating against certain customer groups. The inclusion of Section 394.4(g) by SB 477 alleviates some of this concern. Section 394.4(g) prevents an ESP from collecting a deposit in excess of the estimated bill for a three-month period. However, the concern remains that an ESP might use the deposit requirement to screen out customers that an ESP does not want.

Section 453 is meant to protect against the latter concern. Section 453 prohibits public utilities from discriminating against customers.⁴⁰ Although Section 453 applies

⁴⁰ Section 453 provides in pertinent part:

"(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

"(b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, occupation, sex, marital status or change in marital status. ...

Footnote continued on next page

only to public utilities, it is in the interests of both the state and the public that the same kind of prohibitions should be extended to all ESPs as well. In fact, the Unruh Civil Rights Act (Civil Code Section 51 et seq.) protects all consumers from discrimination by any business establishment.

In the telecommunications industry, the Commission expressed its opposition to any redlining and unlawful discrimination. (See D.95-12-056, p. 85, App. C, 4.F.(17); D.96-10-066, p. 62.) We reiterate that position here with respect to the competitive electricity market.

In addition to the Section 394.5 notice, the Commission can take steps to make the public aware about how much of a deposit can be requested. The CSD could take the lead and disseminate consumer advisories to the media about how much of a deposit an ESP can request.⁴¹ Such an advisory could emphasize that a simple rule of thumb for consumers is to determine what the consumer's average monthly electricity bill is and to multiply that by three. Thus, if an ESP requests a deposit from the customer prior to the start of service, the deposit should not exceed the customer's average monthly electricity bill multiplied by three. The advisory should caution that consumers should question the purpose of all upfront fees required by an ESP, and should compare those fees with what other ESPs and the local utility are charging. The Director of CSD shall explore ways in which consumer advisories can be used to inform consumers about this issue.

An issue related to deposits is whether an ESP should be required to post a bond or make a deposit with the Commission to ensure that the ESP returns the deposits of customers. As discussed earlier in the proof of financial viability section, we will require the ESP to place a deposit or post a bond with the Commission to ensure that

“(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.”

⁴¹ The consumer advisory could also include a discussion of other issues that consumers should be aware of when selecting an ESP.

customers have a source of recourse should an ESP fail to perform or fraudulently takes the customers' monies.

IX. Refusal To Serve

This section addresses the concern that some parties raised regarding redlining of certain customer groups or communities. Redlining is the practice of refusing service to certain customer groups or communities based on discriminatory criteria or to provide service to those customers or communities at different prices. Some of the parties believe that the Commission should adopt adequate oversight mechanisms to prevent any intentional or inadvertent discrimination that may occur.

As we noted in the discussion above regarding customer deposits, the same anti-discrimination prohibitions that apply to public utilities, as well as the Unruh Civil Rights Act, should apply to all ESPs marketing electricity in this state. At the same time, the Commission recognizes that non-utility ESPs are not under the obligation to provide universal service to all persons, and that the ESPs are free to exercise their business judgment to enter and exit markets.

In deciding what the Commission should do about redlining, the Commission is constrained by its narrow regulatory authority over ESPs. If a potential customer or community is discriminated against, individual actions can be pursued in civil court under the Unruh Civil Rights Act. If such a pattern is established, or if the ESP is found to be in violation of the Unruh Civil Rights Act, the Commission can open an investigation to determine whether an ESP's registration should be suspended or revoked.

To assist consumers and the Commission in determining whether discrimination or redlining has occurred, Section 394.5(c) provides:

“Any entity offering electric services who declines to provide those services to a consumer shall, upon request of the consumer, disclose to that consumer the reason for the denial in writing within 30 days. At the time service is denied, the entity shall disclose to the consumer his or her right to make such a request. Consumers shall have at least 30 days from the date service is denied to make such a request.”

This requirement enables customers, as well as the Commission, to detect redlining patterns and incidences of discrimination. Whenever a potential residential or small commercial customer is denied service by an ESP, the ESP is required under this subdivision to inform the would-be customer that the customer has a right to request that the ESP provide the reason for denying service. The ESP is obligated to provide the reason to the consumer within 30 days from the date of the request. The Section 394.5 notice also describes this right to know why service was refused. The reason why a consumer is refused service by an ESP will be one of the things that the Commission will examine should a pattern of discrimination be established. We expect all ESPs offering electrical service to residential and small commercial customers to abide by Section 394.5(c). The failure to inform the denied customer of the right to request the reason for the denial, or to fail to provide the reason for the denial after being requested to do so, could result in a suspension or revocation of the ESP's registration.

The Commission has already taken steps to ensure that redlining and discrimination will be minimized. The approval of the statewide CEP has led to various media campaigns and direct mailings that target every electricity consumer in California. Consumers are being educated about their choice in selecting an electric provider. This educational effort makes it more difficult for an ESP to discriminate because informed consumers can challenge any ESP's reason for refusing service. The efforts of the EET will also help educate consumers, particularly those who live in low-income communities which are more likely to be the target of redlining, about their right to choose an ESP.

To the extent possible, the CEP, the EET, and the Commission staff should inform the public about the provisions of the Section 394.5 notice as part of their educational outreach efforts. The inclusion of this material will inform consumers about their right to know the reason an ESP refuses to provide a consumer with service.

X. Pro-Active Consumer Protection Activities

AB 1890 and SB 477 contain a number of activities that the Commission is to undertake or oversee. Two of these activities are the CEP and the EET. The CEP

activities have been underway for several months already. We plan to issue a decision shortly regarding the EET's proposed work scope.

The electric restructuring legislation also addresses other activities that the Commission is to undertake. As discussed earlier, Section 392.1(c) requires the Commission collect and analyze information so that easily understandable informational guides or other tools can be developed. ORA will be making recommendations to the Commission with respect to that activity.

Section 392.1(b) states that the "commission shall issue public alerts about companies attempting to provide electric service in the state in an unauthorized or fraudulent manner as defined in subdivision (b) of Section 394.25." The Commission has issued similar kinds of alerts in the past involving regulated utilities. As we move toward a competitive environment, the staff must be ready to respond quickly and issue such alerts if ESPs are suspected of engaging in unauthorized or fraudulent activities.

An issue raised by Section 392.1(b) is whether the public should be alerted before the Executive Director has made a finding pursuant to Section 394.25(a). Since a public alert can cause prospective customers to be wary of a particular ESP, such alerts should be issued only after the Executive Director has consulted with the managing Commissioner and made the finding provided for in Section 394.25(a). If an entity is required to be registered, but is not, and that entity is offering electrical services in a fraudulent or unauthorized manner, an alert may be issued before an investigation is opened into the activities of the entity offering electrical service if, in the CSD Director's opinion and the concurrence of the managing Commissioner for consumer protection, electricity customers may be harmed. The Director of CSD shall develop the necessary procedures to ensure that public alerts are issued consistent with the above discussion. CSD shall also coordinate the dissemination of the public alerts with the Commission's News Bureau and the managing Commissioner for consumer protection.

In order to enable consumers to understand what rights they have as consumers, and to educate consumers about what types of questions that consumers should ask when selecting an ESP, the CSD, in conjunction with the Energy Division, should

develop consumer advisories that can be distributed to the media and to groups and organizations. For these consumer advisories to reach as many different consumers as possible, media sources that serve non-English speaking consumers should be targeted as well. The use of the Commission's Internet site should also be considered as a means of distributing consumer advisories. CSD should also ensure that whatever information that is made available to the general public on the Commission's web site should also be made available to the public in a printed copy.

In addition, the UDCs are directed to explore ways in which the CEP can be used to disseminate information regarding these kinds of consumer protection concerns as part of their end-of-program effort in the time remaining. For example, if another direct mail piece is planned, a section regarding consumer protection safeguards could be included.

Consumer outreach and advisories of this sort should explain the steps that a consumer should take when an ESP markets to them. The advisory should explain the purpose of the ESP registration process; what the ESP must arrange in order to deliver electricity to the end-use customer, such as signing a service agreement with the UDC and arranging for a source of electricity; the verification process that must be followed to switch to an ESP; the DASR that must be filed to switch to an ESP; before beginning service the ESP must provide the customer with the Section 394.5 notice; how much of a deposit an ESP can request; and that consumers should compare the fees and services. By pro-actively disseminating this kind of information to all consumers, the Commission can help ensure that consumers have the information they need to assist them in selecting the ESP of their choice.

XI. Other Issues

A. Enforcement Provisions

SB 477 specifically provides that registered ESPs are subject to other enforcement provisions that are contained in the Public Utilities Code. Section 394.25(a) states in pertinent part:

"The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against registered entities as if those entities

were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section shall grant the commission jurisdiction to regulate registered entities other than as specifically set forth in this part. Registered entities shall continue to be subject to the provisions of Sections 2111 and 2112.”

Any entity who is considering doing anything contrary to the statutory provisions regarding electric restructuring, and the decisions adopting such safeguards, should think twice. The Commission will not hesitate to act swiftly and decisively against any electric provider in violation of the applicable statutes or our decisions.

All providers of electricity should also be aware of the provisions of Section 396. Section 396, as amended by SB 477, provides that if a consumer is damaged by a violation of Article 12 (Consumer Protection) by an entity offering electrical services, the consumer is entitled to recover actual damages, exemplary damages, equitable relief, and the consumer’s reasonable attorney’s fees and court costs. It is in the interests of all electricity providers to ensure that they follow the statutory requirements set out in Article 12 and in this decision.

B. Claim For Property

Section 394.27 was added to the code by SB 477. That section provides as follows:

“When a customer files a claim with an electrical corporation for damages to property resulting from the curtailment of electric service due to the failure of the electrical corporation to reasonably provide service or restore service within a reasonable time after a fire, flood, earthquake, other natural disaster, or act of God, the electric corporation shall inform the customer that such claim may be pursued in small claims court or other judicial courts, depending on the amount of the claim.”

The UDCs shall take the necessary steps to incorporate the requirements of Section 394.27 into their customer contact procedures should inquiries about damages to property arise. The CSD should also be made aware of this code section in order to prepare any consumer advisories that might need to issue when these kinds of problems occur.

C. Language

In the two DAWG reports and in the comments to those reports, one of the issues of concern is to ensure that all customer groups receive information regarding electric restructuring in a language that they understand. The CEP and the bill inserts associated with electric restructuring have been designed at the outset to be sensitive to these needs.

Section 394.4(d) has also incorporated this need to present information in a language other than English. That subdivision provides that any written notices describing the terms and conditions of service, service agreements, late payment, discontinuance of service, and disconnection notices, be “in the language in which the entity offered the services.” Thus, if a registered ESP markets its electrical services to customers in a language other than English, the ESP must also provide the written notices in the same language. Section 394.4(d) also states that such notices shall be “easily understandable.”

D. Clearinghouse For Marketing Information

The DAWG reports, and the comments to the reports, addressed the issue of whether the Commission or some other entity should act as a central clearinghouse for all the various ESP service offerings. The idea behind the clearinghouse is to make comparative shopping information available in a uniform format to as many customers as possible.

Some of suggested clearinghouse ideas include the following: a monthly listing of registered ESPs, including those ESPs who have been suspended or revoked; a biannual listing of price comparisons among ESPs; a listing of consumer complaints; a glossary of energy service terms and a description of services; and the creation of certain benchmarks that ESPs must meet. Many of these suggestions have been incorporated into various statutes as added by SB 477, and have been addressed in this decision. For example, the list of registered ESPs has already been established. The Energy Division will also be responsible for creating and maintaining the list of electric providers who are not required to register, i.e., electrical corporations and public agencies, but who request under Section 392.1(a) to be included on the list of ESPs

serving residential and small commercial customers. The Commission has already established an Internet web page that anyone can access which lists all of the ESPs who have applied for a registration number. The list also reflects whether an ESP's registration number has been suspended, cancelled or revoked. In addition, there is a listing of pending formal investigations into ESPs.

The Energy Division will also be receiving information about the service offerings of all registered ESPs through the standard service plan filing. This filing will describe the type of service offerings available, as well as the price, terms, and conditions of service. In essence, all of the information that is needed for someone to compare service offerings will be collected by the Energy Division on a semi-annual basis initially. Although we recognize the difficulties that the Commission staff would encounter if they had to develop a real-time database for comparing prices among competing ESPs, the idea of an information clearinghouse has merit.

We propose that the ORA develop a matrix of categories that allows consumers to easily compare one service offering with another. This matrix could be developed in conjunction with interested parties as part of a workshop. ORA has been charged in Section 392.1(c) with the responsibility to collect and analyze the standard service plan offerings, and to prepare "informational guides or other tools to help residential and small commercial customers understand how to evaluate competing electric service options." ORA would then have to evaluate and summarize the various service offerings of registered ESPs from the materials submitted as part of the standard service plan filing and insert the summary information into the matrix. If computer disks of the Section 394.5 notice are submitted as part of the standard service plan filing, each registered ESP's notice could be posted on the Commission's Internet web site, along with the comparison matrix. If ORA provides such information, consumers would have virtual access to all of the competing service offerings in one central repository.

We recognize that the standard service offerings are filed only on a semi-annual basis initially, and that the information that ORA summarizes may quickly become outdated. This problem could be resolved by providing a cautionary statement that the

information was current as of a certain date and that consumers should contact the ESPs directly for current rates, terms and conditions of service. In addition, if ESPs see value in this clearinghouse matrix, the ESPs could notify ORA of any relevant changes and submit the necessary documents verifying the change as soon as they occur. Provided there are sufficient staff resources, ORA could then update the information in the matrix.

Since the electrical corporations are not required to make the standard service plan filing, ORA would need to obtain the matrix-type information from the tariffs on file with the Commission. Inclusion of the electrical corporation's offerings will provide consumers with all available choices.

We invite parties to comment on the above clearinghouse proposal. Opening and reply comments shall follow the same schedule for comments on the proposed final standards for financial, technical and operational capabilities.

E. Monitoring Of ESP Complaints

We stated in D.97-05-040 at page 31 that certain monitoring devices should be considered as a means of allowing us "to track the progress of direct access, the extent to which there is competition, how well our consumer protection safeguards are working, and the effectiveness of the consumer education efforts." As part of this monitoring effort, we propose to have the UDCs track and provide reports of calls from end-use consumers regarding complaints against any registered or non-registered entity offering electrical service to the public. The UDCs are likely to be one of the chief sources of initial complaints due to the familiarity of end-use customers with the services offered by the electrical corporations prior to electric restructuring. Since this monitoring proposal was not included as part of the draft decision that was mailed for comment, it is appropriate to allow comments on this proposal before the Commission decides whether it should be adopted.

We propose to require each UDC to maintain a database or record of calls to the UDC's customer service center regarding complaints about any registered ESP or any other entity offering electrical services to residential and small commercial customers. This recordkeeping shall track the number of calls from consumers alleging that an ESP

has failed to follow a rule, procedure, or other requirement, or a call seeking redress or a change of behavior on the part of an ESP. Calls requesting information about an ESP or general questions about an ESP should not be recorded as a complaint call. The recordkeeping shall also categorize the complaints into the types of conduct complained about, as well as record the name, address and telephone number of the complainant if possible. CSD shall be responsible for developing the necessary reporting framework for the type of information that the CSD would have the UDCs report.

It is proposed that the CSD shall have access to this record or database from the UDCs upon request. Such monitoring information shall be used only to monitor the ESPs' compliance with applicable laws, rules and orders, to assist in any investigation or enforcement actions against alleged violators, and to detect possible problem areas.

Interested parties may comment on the above monitoring proposal. Opening and reply comments on this proposal shall follow the same schedule for the comments regarding the proposed final standards for proof of financial, technical and operational capabilities.

Findings of Fact

1. The Commission has recognized that in the restructured electricity market, there will be a need for the Commission to continue and expand its role of providing protection, safety and information to consumers, and to provide a forum for the resolution of complaints.

2. SB 477 amended Article 12 of Chapter 2.3 of Division 1, Part 1 of the Public Utilities Code.

3. The CEP is an integral part of the Commission's consumer protection strategy.

4. If consumers have sufficient and reliable information, they will be able to compare and select among the products and services offered in the restructured electricity market.

5. On March 18, 1998, Commonwealth filed a petition to intervene.

6. UCAN filed a motion on March 19, 1998 to late-file additional comments to the draft decision.

7. In developing consumer protection rules, the Commission should balance the Commission's mandate to protect consumers and the need to refrain from imposing burdensome rules and regulations.

8. Some consumer protection issues were previously addressed in other Commission decisions regarding electric restructuring.

9. Section 394(a), as added by SB 477, now requires that the Commission register all entities in California who offer electrical service to residential and small commercial customers, except for electrical corporations and public agencies offering such services within their own political jurisdiction or the service territory of a local publicly owned electric utility.

10. Some ESPs may have other persons or entities undertaking marketing activities on the ESP's behalf.

11. Section 394.1(d), as added by SB 477, requires that registered ESPs update the ESP registration information required by Section 394(a) within 60 days if there is any material change in the information that was previously provided.

12. SB 477 amended Section 396 by deleting the January 1, 2002 termination date.

13. The ESP registration application form was initially adopted in D.97-05-040.

14. The Commission stated in D.97-05-040 that should the Legislature require additional items on the ESP registration application form, the Commission may require registrants to supplement or update their registration forms.

15. In D.97-05-040 the Commission ordered that all registered ESPs shall abide by whatever consumer protection rules the Commission may adopt in the future.

16. SB 477 added a new Section 394, which requires that the registrant, as a precondition to registration, provide information pertaining to ten different elements.

17. An ALJ ruling was issued on November 7, 1997 informing all registered ESPs of the revised application form, and that the ESPs were to supplement their original filing by December 15, 1997.

18. Due to the staff's experience with the ESP registration process, and the interim standards we adopt, the ESP registration application form has been revised as reflected in Appendix A.

19. The notice section in the ESP registration application form informs ESPs of some of the requirements that all registered ESPs must abide by.

20. Sections 394(a)(9) and (10) direct the Commission to develop uniform standards for proof of financial ability and proof of technical and operational ability and to publish those standards for public comment no later than March 31, 1998.

21. The November 7, 1997 ALJ ruling invited written comments on what type of standards and criteria the Commission should adopt as proof of a registrant's financial viability and technical and operational ability.

22. A provisional registration process should not be adopted.

23. To a large extent, financial viability and technical and operational criteria are already contained in our direct access decisions.

24. The UDC-ESP service agreement, the direct access tariff provisions that the ESP must abide by, and the agreement with an SC all have requirements which make it necessary for the ESP to have some level of technical and operational experience in energy transactions.

25. Depending on the type of billing option the ESP selects, the UDC may require the ESP to meet certain credit requirements.

26. A requirement that all prospective ESPs must have a signed UDC-ESP service agreement before the ESP can apply to register will screen out a large number of entities who lack the financial resources and technical and operational skills.

27. An ESP's agreement with an SC requires some level of technical and operational competence on the part of the ESP, as well as financial viability.

28. Further proof of an ESP's technical and operational experience could come from a requirement to disclose the names of key personnel and their experience, as well as the names and experience of any companies acting on behalf of the ESP.

29. Additional proof of an ESP's technical and operational ability will come from the development of the Section 394.5 notice.

30. The credit requirements adopted in Section S of Appendix A of D.97-10-087 were intended to address the creditworthiness of the ESP.

31. A security deposit posted with the UDC does not provide customers with adequate recourse should the ESP fail to provide service.

32. To ensure that customers have adequate recourse, the ESPs serving residential and small commercial customers should be required to post a security deposit with the Commission.

33. The size of the security deposit should depend on the number of customers.

34. The draft decision originally proposed that ORA's method be used as the proposed final standard, subject to a minimum deposit of \$25,000.

35. The Commission should adopt a minimum security deposit to be posted as the floor.

36. If the size of the security deposit is scaled according to the number of customers served, the size of the deposit could be adjusted when the standard service plan is filed.

37. To avoid an unnecessarily high security deposit, the Commission should cap the security deposit at some reasonable level commensurate with the size of the company and the number of customers served.

38. The security deposit requirement should apply to all registered ESPs, regardless of whether the ESP requires a deposit from its customers.

39. The Commission should require that all ESPs planning to serve residential or small commercial customers post either a cash security deposit or a financial guarantee bond with the Commission in the amount required, or in the alternative, allow the ESP to open a customer trust account in a format that is agreeable to the Commission's Legal Division.

40. This decision contains the proposed standards that ESPs must show as proof of financial viability and proof of technical and operational ability.

41. If an ESP has been authorized by the ISO to be an SC, certain requirements contained in the proposed standards should be waived due to the ISO's financial, technical and operational requirements that the SC must meet.

42. Before imposing the annual fee under Section 394.3(b), the Commission needs to annually determine the costs.

43. Section 394.1 contains the procedures that the Commission must follow in order to deny an ESP's registration application.

39. Section 394.25(a) contains the procedures that the Commission must follow to suspend or revoke an ESP's registration for the grounds set forth in Section 394.25(b).

40. The Commission has developed some internal processes for initiating the Section 394.25(a) procedure.

41. Section 394.2 permits the Commission to initiate investigations into the activities of ESPs when the Commission reasonably suspects a pattern of customer abuses.

42. Section 394(d) describes the procedure an ESP must follow if the ESP's registration was revoked.

43. The Legislature granted the Commission broad authority in Section 394.4(h) to fashion additional consumer protection rules.

44. An administrative suspension procedure is consistent with the Legislature's declarations to protect consumers from unfair or abusive marketing practices.

45. An inactive status for currently registered ESPs should be permitted.

46. Section 392.1 provides for the establishment of certain procedures to disseminate information about registered ESPs, any complaints against them, and information to assist customers in making service choices.

47. The Commission's web site provides some of the information that consumers need to assist them in selecting a registered ESP.

48. Electrical corporations and public agencies that offer electrical service to residential and small commercial customers within their own political jurisdiction or within the service territory of the local publicly owned electric utility are exempt from having to register with the Commission.

49. Section 392.1(a) allows electrical corporations and public agencies that offer electrical service to residential and small commercial customers within their own political jurisdiction or within the service territory of the local publicly owned electric utility to be included on the list of entities offering electrical services in California.

50. The term "public agency" is not specifically defined in the Public Utilities Code.

51. The number of customers served by each registered ESP and the type of customer served shall be reported by each registered ESP in its standard service plan filing.

52. In order to accurately track the growing number of customers served by each registered ESP, the standard service plan filing should be made initially at six-month intervals for a period of three years.

53. GO 66-C provides that records or information of a confidential nature furnished to the Commission is not open to public inspection.

54. Information about the number of customers served by each registered ESP could place the company at an unfair business disadvantage.

55. The standard service plan filing shall also contain information about the terms and conditions of any standard service plans that the ESP offers or plans to offer to its residential and small commercial customers, as well as any marketing materials relating to such plans as part of the filing, and a copy of the Section 394.5 notice.

56. The information contained in the standard service plan filing will assist the Commission staff in ensuring that customers are protected from technically inaccurate or fraudulent claims.

57. The information in the standard service plan filings regarding the number of customers needs to be coordinated with the reports to the Commission about the number of customer complaints against ESPs.

58. Section 392.1(c) provides that the Commission is to direct ORA to collect and analyze the information contained in the standard service plan filing and the information relating to the number of customer complaints.

59. Section 392.1(c) provides that ORA is to ensure that customers have correct, reliable and easily understood information to help customers make informed choices.

60. If slamming-related complaints arise, the Commission should determine whether the ESP properly followed the verification procedures.

61. Section 366.5(b)(3) provides that the verification record is to be made available to the customer upon request.

62. If a customer complains to the Commission that it has been slammed, the record of the third-party verification may be useful in detecting whether any slamming occurred.

63. Section 366.5(b)(3) provides that the information obtained from the customer through the confirmation process is not to be used for any marketing purposes, and any unauthorized release is grounds for a civil suit.

64. If slamming occurs, neither the slamming ESP or the customer's original ESP should benefit from any overpayment by the customer as a result of the slamming.

65. D.97-10-031 adopted the CEC's proposal that customers should be provided with an opportunity to inform ESPs that they wish to be contacted by ESPs.

66. The Commission has already adopted rules which govern when customer - specific information can be released.

67. The opt-in list should be limited to a one-time solicitation because of the cost of periodic updates and because of the likelihood of diminishing returns.

68. The only entities who should be able to purchase the opt-in list are registered ESPs in good standing, public agencies and electrical corporations, and possibly energy efficiency providers.

69. The only information that the opt-in list should disclose is the consumer's name, mailing address, and the telephone number if the consumer elects to release his or her number.

70. Before deciding whether the Commission should proceed with the design and implementation of the opt-in database, the Commission should first determine how many ESPs, public agencies, electrical corporations, and energy efficiency providers are interested in purchasing the opt-in database and at what cost.

71. Section 394.7 provides that the Commission is to maintain a list of residential and small commercial customers who do not wish to be solicited by telephone to subscribe to or change their electric provider, and that any electrical corporation or ESP which solicits any customer on the list more than once shall be liable to the customer for \$25 for each such contact.

72. Section 394.7(b) states that the opt-out list is to be made electronically accessible.

73. Electronic accessibility raises several practical problems that need to be addressed by Commission staff.

74. The information contained in the opt-out list is to remain confidential and shall only be used for Section 394.7(c) purposes.

75. In any materials describing the opt-out list, customers should be informed about whether they want to disclose their unlisted number on the opt-out list, and what penalties can result if Section 394.7 is violated.

76. Any action brought pursuant to Section 394.7(c) should be filed in Small Claims Court.

77. The reasonable costs of activities that the UDCs perform with respect to the opt-out list may be included in their Section 376 costs since the opt-out list is a statutory requirement.

78. D.97-05-040 ordered that all ESPs seeking to offer electrical services to residential and small customers provide the notice required by former Section 394(b).

79. The Commission solicited comments from the parties as to the type of notice that should be developed.

80. Green Mountain filed a motion on July 22, 1997 requesting that its reply comments to the design of the notice be accepted for late-filing.

81. Former Section 394(b) was incorporated into Section 394.5 as added by SB 477.

82. Section 394.5(a) provides that the notice shall contain seven elements.

83. Due to the list of the elements required to be in the Section 394.5 notice, and the various interpretations that each ESP could render, ESPs should use the uniform notice format that is attached as Appendix C.

84. The use of the Appendix C notice will assist consumers in being able to compare and select an ESP using a standard basis for evaluation.

85. Section 394.5(a)(1)(A) requires that the price of electricity be in a format in which customers can compare and select among similar products and services.

86. The price of electricity will fluctuate and will be dependent on the future prices of electricity.

87. If the price of electricity is not reasonably reflected in the Section 394.5 notice, consumers will not be able to adequately compare costs.

88. Some of the pricing structures tie the price of electricity as a discount or an adder to the PX price.

89. Section 394.5(a)(1)(A) requires that the total price of electricity be expressed on a cents-per-kWh basis unless other information would provide the customer with sufficient information to compare among alternatives on a standard basis.

90. If cents-per-kWh pricing is used, the electricity price contained in the notice shall be the actual price which the ESP will charge the customer.

91. If pricing is on a cents-per-kWh basis, Section 394.5(a)(1)(A) requires that the notice also include an estimate of the total monthly bill at various consumption levels for residential and small commercial customers.

92. PX minus or PX plus pricing will provide customers with sufficient information to compare alternatives on a standard basis and will be permitted on the Section 394.5 notice.

93. ESPs shall be permitted to peg the price of electricity to any publicly available published price index.

94. If pricing is on a PX plus or PX minus pricing basis, or pegged to any other published price, the Section 394.5 notice shall also include an estimate of the total monthly bill at various consumption levels for residential and small commercial customers.

95. Section 394.5(a)(1)(B) requires that there be a separate disclosure of all recurring and non-recurring charges associated with the sale of electricity.

96. If other services are offered by a registered ESP, Section 394.5(a)(1)(C) requires that those charges be itemized on the notice.

97. Section 394.5(a)(2) requires that the notice contain an explanation and the amount of the competition transition charge.

98. The notice should include a description of other non-bypassable charges that residential and small commercial customers are obligated to pay.

99. Section 394.5(a)(3) requires that the notice contain a description of the potential customer's right to rescind the contract without fee or penalty.

100. If the customer switch occurs entirely by telephone, the customer has three days from the date of the verification to cancel the switch in accordance with Section 395.

101. Section 394.5(a)(4) requires an explanation of the customer's financial obligations, as well as a description of the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.

102. Section 394.5(a)(5) requires that the entity's registration number appear as part of the notice.

103. Section 394.5(a)(6) requires that the notice inform customers about their right to change service providers.

104. Section 394.5(a)(7) requires that the notice contain a description of the availability of low-income assistance programs and how customers can apply.

105. Section 398.4 requires every retail supplier that makes an offering to sell electricity that is consumed in California to disclose the supplier's electricity sources to potential end-use customers.

106. Inclusion of a description of Section 394.8 will assist consumers in obtaining more information about an ESP's generation mix.

107. D.97-12-090 stated that all registered ESPs are to follow the statutory provisions of Section 394.5 until such time further clarifying details are adopted by the Commission.

108. Section 394.2(a) requires the Commission to accept, compile, and attempt to informally resolve consumer complaints regarding registered ESPs.

109. Section 394.2(b) gives the Commission the authority to accept, compile, and resolve residential and small commercial consumer complaints, including the authority to award reparations.

110. Section 394.2 does not confer the Commission with any authority to handle a complaint involving a non-registered ESP.

111. Section 394.25(a) permits the Commission to take direct enforcement action against registered ESPs.

112. Complaints against ESPs who market electric services to large commercial and industrial customers may be pursued in civil court.

113. Section 394.2(c) provides that registered entities shall provide the Commission with access to their records related to their California transactions so long as the information is relevant to the complaint or investigation.

114. Information that is needed from non-registered entities may be obtained through the Commission's subpoena power as set forth in Sections 311(a) and 312.

115. Section 394.2(d) provides that if a complaint is filed with the Commission against a registered ESP, the ESP is prohibited from discontinuing service to the customer over the disputed amount if the customer deposits the amount into an escrow account.

116. The Section 394.5 notice must inform potential customers of the procedures regarding billing disputes, including the Section 394.2(d) procedure.

117. Section 394.4(e) provides that the bills of registered ESPs are to have a standard bill format as determined by the Commission.

118. Section 394.4(e) also provides that if a registered ESP is contacted by a customer regarding a billing dispute, the Commission must advise the customer at the time of initial contact that the customer may file a complaint with the Commission if its dispute is not satisfactorily resolved by the ESP.

119. Registered ESPs should be required to include on all their customer bills a notice that informs customers of their rights under Section 394.2(d).

120. The minimum standards set forth in Section 394.4 apply to residential and small commercial customers.

121. Other electric restructuring decisions have already addressed some of the standards contained in Section 394.4.

122. Section 394.4(b) permits only an electrical corporation to physically disconnect or reconnect a customer from the transmission or distribution grid.

123. Section R of Appendix A of D.97-10-087 permits only the UDCs to disconnect and reconnect a customer if the customer fails to pay any amounts owed.

124. Section 394.4(e) provides that the bills of the registered ESPs shall have a standard bill format, be sufficiently detailed for the customer to recalculate the bill, shall separately state any late fees, and shall provide a telephone number that customers may call to report and resolve billing questions or complaints.

125. Section 392(c) provides that the standard bill format developed by the Commission for registered ESPs shall also apply to the electrical corporations.

126. Section 392(a) requires electrical corporations to disclose certain components on the bill, as well as a notice informing customers of their continuing obligation to pay the competition transition charge.

127. In D.97-05-040, the electrical corporations were ordered to ensure that electrical bills contain the information required by Section 392(a).

128. D.97-12-090 directed the UDCs to include a tariff requirement that customer rights information must be included on the electricity bill that is presented to the end-use customer.

129. D.97-08-056 addressed bill formatting issues for the UDCs.

130. An ESP who performs consolidated billing shall ensure that all of the charges that are required to appear on the UDC's bill also appear on the ESP's consolidated bill.

131. The bill format shall include certain customer information, metering information, price information, usage history if possible, other charges, and the date for payment.

132. The bill format shall include a telephone number for questions or complaints about the provider's bill, and certain information which advises customers about their rights.

133. If billing is provided for services that are unrelated to the sale of electricity, that portion of the billing shall be in a separate section of the bill and each charge shall be separately itemized.

134. Section 394.4(f) provides that an electric customer shall have a reasonable opportunity to have its meter tested to ensure the reasonable accuracy of the meter, and that the Commission is to decide who is responsible for the cost of the testing.

135. D.97-10-087 adopted some tariff provisions regarding meter calibration and testing, the testing of meter functions, and billing adjustments for meter error and billing error.

136. If an ESP's metering provisions parallel the provisions that the Commission has adopted for the UDCs, and the ESP requests the UDC to test a customer's meter for accuracy, the party who pays for testing should be in accordance with Section H.(4) of Appendix A of D.97-10-087.

137. If a customer suspects meter error but the ESP who maintains the meter is not cooperating to resolve the matter, the customer may submit a complaint to the Commission under the Section 394.2(a) procedure, and should it be necessary, the Commission can order the UDC to test the meter in question.

138. Responsibility for the cost of the meter testing should be in accordance with the text of this decision.

139. D.97-10-087 and D.97-12-048 addressed concerns about the sale or use of tampered or defective meters and the diversion of electricity.

140. Section 394.4(g) provides that registered entities cannot require a deposit in excess of the estimated bill of the customer for a three-month period.

141. Section 394.5(a)(4) requires an explanation of the customer's financial obligations.

142. In D.95-12-056, the Commission expressed its opposition to any redlining or unlawful discrimination.

143. Section 394.5(c) requires an ESP to disclose to the consumer upon refusing service, that the consumer may request the reason why service was refused.

144. The failure of an ESP to inform the denied consumer of the right to request the reason for the denial, or the failure to provide the reason for the denial after such a request is made, could lead to a suspension or revocation.

145. Section 392.1(b) provides that the Commission is to issue public alerts about companies attempting to provide electric service in the state in an unauthorized or fraudulent manner.

146. Section 394.25(a) provides for other kinds of enforcement tools.

147. Section 396 provides for damages and other relief if an action is brought in court.

148. Section 394.27 requires the electrical corporations to inform customers of their rights if a claim for damages to property is filed with the utility.

149. Section 394.4(d) provides that certain written notices be in the language in which the entity offered the services.

Conclusions of Law

1. The rules and procedures adopted in this decision will ensure that consumers have mechanisms to protect themselves from unfair or abusive marketing practices.

2. The consumer protection rules and procedures adopted in this decision affect the business operations of registered ESPs and their relationships with their customers.

3. Unless otherwise exempted, all entities who plan to offer electrical service to residential and small commercial customers in the service territories of those publicly owned electric utilities who have authorized direct access, are required to register with the Commission.

4. Section 394 does not apply to entities which are solely performing marketing functions on behalf of a registered ESP.

5. D.97-05-040 should be modified to reflect the changes made as a result of SB 477.

6. Section 394(a)(8) and Section 394.1(c) contemplate that the Commission shall conduct a criminal background check of ESPs and their officers and directors.

7. Requiring an ESP to provide to the Commission a full set of fingerprints of their directors and officers is necessary to enable a criminal background check to assure compliance with the statute.

8. The revised ESP registration application form, as shown in Appendix A, provides the necessary information required by Section 394, and is consistent with the Commission's authority to adopt additional consumer protection standards.

9. All ESPs who have previously received an ESP registration number should be required to supplement their registration information by completing the ESP registration application form, as revised, and submitting all required documents.

10. Since the registration process is an exercise of the Commission's licensing function, any non-compliance with the registration requirement could lead to a suspension of an ESP's registration by the Energy Division until such time the ESP complies.

11. If an ESP's description of the key personnel reflects that the ESP has little or no experience in the energy field or related businesses, the Energy Division should recommend to the Executive Director that the registration application be denied in accordance with the Section 394.1 procedure.

12. Section 394(a)(9) seems to suggest that a mechanism should be developed which ensures that customers have some ability to recoup their financial losses should an ESP defraud customers or go out of business, and that the ESP should be sufficiently capitalized.

13. The requirement of a security deposit will evidence that the ESP registrant is financially viable, and that adequate recourse will be available in the event of the ESP's fraud or non-performance.

14. The direct access tariff provisions do not permit a UDC to refuse to enter into a UDC-ESP service agreement if the ESP has not yet registered with the Commission to serve residential and small commercial customers.

15. A security deposit of \$25,000 is reasonable.

16. The Commission should adopt interim standards for proof of financial viability and proof of technical and operational ability so as to protect consumers from unfair or abusive marketing practices.

17. Interim standards will ensure that all registered ESPs are financially, technically, and operationally capable of conducting a business.

18. If a currently registered ESP cannot meet the interim standards, or no longer wants to offer electrical services to residential or small commercial customers, the ESP may submit a request asking that its ESP registration be cancelled.

19. The effect of a cancelled registration number is that the ESP shall no longer be a registered ESP and may not offer electrical services to any residential or small commercial customer in California.

20. Section 394.3(b) suggests that the costs of the registration program and the other consumer protection activities should be collected from the ESP registrants on an annual basis.

21. The determination as to which costs should be included in the annual fee should be limited to only those items set forth in the first sentence of Section 394.3(b).

22. The reference to the “commission” in the fourth line of Section 394.1(b) should be interpreted to mean that the Executive Director, on behalf of the Commission, is to notify the entity.

23. The right to suspend an ESP’s registration on an interim basis does not violate due process where there is a compelling state interest and a timely hearing is provided for.

24. The Commission should have the authority to immediately suspend an ESP’s registration on an interim basis prior to a hearing should it be necessary.

25. The Commission’s authority to suspend is consistent with the Legislature’s findings and declarations in Section 391.

26. It is the Commission that makes the final decision as to whether an ESP’s registration should be suspended or revoked.

27. Should the Commission temporarily suspend an ESP’s registration pursuant to Section 394.25(a), a procedure should be established which permits the ESP to request the assigned Commissioner at the conclusion of the hearing, to lift the temporary suspension.

28. The assigned Commissioner shall have the authority to set aside the temporary suspension at the conclusion of the Section 394.25(a) hearing and reinstate the ESP’s registration until the Commission issues its decision.

29. The Section 394.25(a) procedure may be initiated by the Executive Director without the need for the opening of a companion investigation.

30. An application filed in accordance with Section 394(d) requires that the Commission approve the application before an ESP's registration can be reinstated.

31. Section 394.4(h) provides authority for the Commission or the staff to ministerially suspend ESPs who fail to provide the information required by SB 477 or by the Commission.

32. The following definition of the term "public agency" should apply for the purposes of Chapter 2.3 of the Public Utilities Act: "The state, any city, county, city and county, municipal corporation, public district, special district, or public authority located in whole or in part within this state, or any board, commission, or agency thereof, which provides or has authority to provide electrical services. Public agency also includes any non-profit group whose membership is confined to the type of entities described in the first sentence of this definition."

33. The use of the term "complaint" in Section 392.1 refers to the complaints that are submitted to or filed with the Commission in accordance with Section 394.2.

34. The intent expressed in Section 392.1(a) is that the number of customers served by each registered ESP should be provided to the Commission.

35. Section 583 does not apply to registered ESPs unless the ESP is a public utility, a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility.

36. A UDC is prohibited from sharing or disclosing with any of its affiliates the number of customers an ESP has unless the affiliate transaction rules set forth in D.97-12-088 have been complied with.

37. Suspension of an ESP's registration is appropriate if an ESP fails to submit the required standard service plan filing because the filing of such a plan is mandatory.

38. The failure of an ESP to timely submit all required documents impairs the Commission's ability to protect consumers from unfair or abusive marketing practices.

39. Should an ESP or third-party verifier be reluctant to provide a record of the verification, the Commission may use its subpoena power to obtain those records.

40. Section 366.5(c) contemplates that if an ESP switches a customer without consent, that ESP is liable to the customer's original ESP for all of the amounts paid to the new ESP by the customer.

41. Requiring an ESP to sign an agreement pertaining to the confidential nature of the opt-out list and the use of such a list is consistent with the confidentiality provisions of Section 394.4(a).

42. Section 394.7(c) only prohibits ESPs and electric corporations from contacting the persons on the opt-out list by telephone.

43. In light of the confidentiality standards in Section 394.4(a), ESPs and electric corporations should be prohibited from using the opt-out list as a source for a mailing list.

44. The \$25 amount in Section 394.7(c) amounts to a fine or penalty and is not a reparation.

45. The format of Appendix C is in compliance with Section 394.5.

46. Should any ESP change any of the price, terms or conditions of service, the ESP shall provide the customer with a written notice of the change 30 days prior to the effective date of the change.

47. When the various code sections are read together, it is clear that no fees or penalties shall be imposed on the customer by the ESP if the customer exercises his or her right to cancel within the time provided for in Section 395.

48. The customer should have the right to cancel without penalty three days after the third-party verification, or three days after receipt of the Section 394.5 notice, whichever is later.

49. Section 394.5(a)(4) requires an explanation of all financial obligations the customer will face if the customer signs up with a particular ESP.

50. The Legislature appears to have intended that a residential or small commercial customer may terminate an ESP contract early if adequate notice is provided, and the customer is aware of the fees or penalties associated with the early termination of service.

51. The assigned Commissioners shall be delegated the authority to suggest inclusion of additional information on the Section 394.5 notice if they deem the revisions are necessary for consumer protection.

52. The Section 394.5 notice is to be provided to potential customers prior to the signing of any service agreement or contract and the initiation of a DASR on the customer's behalf, and before any third party verification takes place.

53. The legislative intent in establishing subdivisions (a) and (b) of Section 394.2 was to allow the Commission to handle two types of consumer complaints.

54. A registered ESP's rates, terms, and conditions of service are not subject to the Commission's jurisdiction.

55. A complaint against a registered ESP involving its rates, terms, and conditions of service may only be informally resolved under Section 394.2(a).

56. If a residential or small commercial customer submits a complaint against a registered ESP which involves issues that do not relate to the rates, charges, or terms and conditions of service, the Commission should accept the complaint for filing pursuant to Section 394.2(b) unless the customer has raised the same claim in a civil action.

57. The Commission retains full authority to adjudicate a complaint which involves deceptive, unfair or abusive marketing practices.

58. Section 394.2(a) permits the Commission to open an investigation into the activities of any entity offering electrical service, whether registered or not, as well as those ESPs who offer services to large commercial and industrial customers, if the Commission suspects a pattern of customer abuses.

59. Inclusion of a description of the Section 394.2(d) process on each registered ESP customer bill is in the public interest because it will inform customers of their rights regarding disputed bills.

60. Customer rights information includes a description of when a bill is considered past due, the amount of deposit that can be requested, a summary of the available complaint procedures, and that service cannot be discontinued if the procedure set forth in Section 394.2 is followed.

61. The term “financial obligations,” as used in Section 394.5(a)(4) means that the Section 394.5 notice shall contain an explanation of the ESP’s deposit requirement.

62. Section 453 prohibits only public utilities, and not ESPs, from discriminating against customers.

63. The Unruh Civil Rights Act protects all consumers from discrimination by any business establishment.

64. If a pattern of discrimination is established, or if the ESP is found to be in violation of the Unruh Civil Rights Act, the Commission can open an investigation to determine whether an ESP’s registration should be suspended or revoked.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 97-05-040 is modified as follows:
 - a. At page 59 in the last sentence of the second paragraph, the reference to “30 days” shall be replaced with “60 days.”
 - b. At page 59 in the fourth paragraph, the following sentence shall be deleted: “In accordance with Section 396(d), this registration requirement shall terminate on January 1, 2002, unless extended by a later enacted statute.”
 - c. Conclusion of law number 51 at page 88 shall be deleted in its entirety, and the remaining conclusions of law shall be renumbered.
 - d. In ordering paragraph 5.i.(1), the reference to “30 days” shall be replaced with “60 days.”
 - e. Ordering paragraph 5.i.(4) shall be deleted in its entirety, and ordering paragraphs 5.i.(5) and 5.i.(6) shall be renumbered as ordering paragraphs 5.i.(4) and 5.i.(5), respectively.
2. The March 18, 1998 petition to intervene of Commonwealth Energy Corporation is granted.
3. The March 18, 1998 motion by the Utility Consumers Action Network (UCAN) to late-file additional comments is granted. The Docket Office shall file the “Comments Of UCAN On Proposed Decision On Consumer Protection Rules” as of the date the comments were received.
4. The July 22, 1997 motion of Green Mountain Energy Resources L.L.C. to accept the late filing of its reply comments one day out of time is granted. The Docket Office is directed to file the “Reply Comments Of Green Mountain Energy Resources L.L.C. On Notice Requirements” as though it was filed on July 22, 1997.
5. The interim standards for proof of financial viability and proof of technical and operational ability as set forth in this decision are adopted. These interim standards shall remain in effect until the Commission adopts permanent standards.

6. Appendix A is adopted as the electric service provider (ESP) registration application form that all ESPs who serve residential or small commercial customers are required to use.

7. Appendix B is adopted as the standard service plan form that all registered ESPs must complete and submit to the Commission.

8. Appendix C is adopted as the format of a notice that complies with the requirements of Public Utilities Code Section (Section) 394.5.

- a) To the extent that Section 394.5 has been interpreted in this decision to require the disclosure of certain items in the Section 394.5 notice, ESPs shall have 45 days from today to incorporate those required elements. In the interim, the ESPs may continue to use a notice that meets at least the minimum requirements of Section 394.5.
- b) The Section 394.5 notice shall be provided to potential customers prior to the signing of any service agreement or contract and the initiation of a direct access service request on the customer's behalf, and to any potential customer upon request.
- c) The Commissioners assigned to direct access are delegated the authority to make subsequent changes to the format and content of Appendix C.

9. The bill format that is described in Section VIII of this decision is adopted as the standard bill format for both registered ESPs and electrical corporations.

- a) All registered ESPs and electrical corporations shall use the standard bill format.
- b) The registered ESPs and electrical corporations shall have 60 days from today to comply with the standard bill format requirement.

10. Pursuant to the authority granted in D.97-05-040, that each registered ESP shall abide by whatever consumer protection rules the Commission may adopt, and the interim standards adopted in this decision, all ESPs who received an ESP registration number on or before today shall do the following:

- a) If the registered ESP has not executed a service agreement with any utility distribution company (UDC), that ESP is prohibited immediately from marketing, advertising, or otherwise offering for sale any retail direct access electrical services to any residential or small commercial customer in California.

- i) The ESP may not market, advertise, or otherwise offer for sale any electric services in any UDC's service territory until a UDC-ESP service agreement has been signed with the UDC in whose service territory the ESP plans to do business in.
 - ii) The ESP shall supplement its ESP registration information by completing the "Electric Service Provider Application Registration" form that is attached hereto as Appendix A, and shall submit the completed form together with all required documents to the Commission's Energy Division, ESP Registration, within 90 days from today.
- b) If a registered ESP has executed a service agreement with one or more UDCs, that ESP shall be permitted to offer electric service only in the service territories of those UDCs for which the ESP has a service agreement.
- i) All registered ESPs who have executed a UDC-ESP service agreement shall supplement their ESP registration information by completing the "Electric Service Provider Application Registration" form that is attached hereto as Appendix A, and shall submit the completed form together with all required documents to the Commission's Energy Division, ESP Registration, within 90 days from today.
- c) All registered ESPs who have signed up or initiated a direct access service request on behalf of a residential or small commercial customer shall:
 - i) Post a cash security deposit of \$25,000 with the Commission, or post a financial guarantee bond in favor of the Commission in the amount of \$25,000. The deposit or bond shall be delivered to the Energy Division, ESP Registration within 14 days from today to the following address: 505 Van Ness Avenue, 4th Floor, San Francisco, California 94102-3298. In the alternative, the ESP may open a customer trust account in the amount of \$25,000 in a format that is to be approved by the General Counsel. Pending such approval, the cash deposit or performance bond is required.
 - (a) This security deposit amount is subject to change. Should a different security deposit amount or formula be adopted, all registered ESPs shall be required to comply with the change.
 - ii) The ESP shall submit the Section 394.5 notice to the Energy Division at the address noted above within 15 days of today's date.

- iii) The ESP shall submit copies of all its scheduling coordinator (SC) agreements or declarations from each SC with which it has an agreement as part of the ESP's supplemental registration information.
 - d) If a registered ESP has not yet signed up any customer:
 - i) The ESP shall submit a copy of its Section 394.5 notice to the Energy Division-ESP Registration, when the ESP signs up its first customer or when the first standard service plan filing of the ESP is due, whichever is earliest.
 - ii) The ESP shall submit a copy of all its SC agreements or declarations from each SC with which it has an agreement on or before the date when the ESP signs up its first customer.
 - e) If a currently registered ESP cannot meet the interim standards, or if it no longer wants to offer electrical services to residential or small commercial customers, the ESP may submit a request to the Energy Division-ESP Registration, 505 Van Ness Avenue, 4th Floor, San Francisco, California 94102, requesting that its ESP registration be cancelled, or the currently registered ESP may request that it be placed on inactive status by mailing a written request in the prescribed form to the Energy Division-ESP Registration, within 20 days from today.
 - i) An ESP who voluntarily cancels its registration or who is placed on inactive status is prohibited from advertising, marketing, or otherwise offering electrical service to residential or small commercial customers.
 - f) All registered ESPs shall provide to the Commission a full set of fingerprints of their directors and officers, on fingerprint cards provided by the Commission. The completed fingerprint cards shall be delivered to the Energy Division, ESP Registration, within 30 days from today to the following address: 505 Van Ness Avenue, 4th Floor, San Francisco, California 94102-3298.
11. The Energy Division shall do the following:
- a) Coordinate and take action to implement all the necessary procedures to ensure that the interim standards and other rules and procedures adopted in this decision are complied with.
 - i) At the time the ESP registration number is issued, the Energy Division shall provide each ESP with a list describing their obligations as ESPs and any due dates. The Energy Division shall also establish a system to remind ESPs of upcoming required filings, including the subsequent notifications for remaining on inactive status.

- ii) The Director of the Energy Division shall ensure that the Energy Division staff, in conjunction with the Consumer Services Division (CSD), the Administrative Law Judge (ALJ) Division and the Executive Director, develop the procedures required by Sections 394.1 and this decision.
- b) Monitor the ESP's compliance with the ordering paragraphs of this decision, and take action to suspend any currently registered ESP who fails to supplement their registration information within 100 days from today or to place on inactive status those currently registered ESPs who request such status.
 - i) The suspension process for failing to supplement shall follow the procedures set forth in Section IV.F.3.
 - ii) No later than 100 days from today, the Energy Division shall notify the UDCs of all the ESPs who have been suspended for failing to supplement their registration information.
- c) Establish procedures for those currently registered ESPs who request to be placed on the inactive status list and to take any necessary followup action.
 - i) Within 30 days, the Energy Division shall notify the UDCs of all the ESPs who have been placed on inactive status.
 - ii) Prior to July 1, 2000, the Energy Division shall take steps to permanently revoke the registration number of any entities remaining on the inactive status list.
- d) The Director of the Energy Division, or his designee, is delegated the authority to cancel the ESP's registration upon request of the ESP.
 - i) Upon cancellation, the Energy Division shall notify the UDCs of the ESPs whose registration numbers have been cancelled.
- e) The Director of the Energy Division shall ensure that the staff develops the procedures necessary to create a listing of those electrical corporations and public agencies who are not required to register in accordance with Section 394.
 - i) Electrical corporations and public agencies, as that term is defined in this decision, may request that they be included on the list of entities offering electrical services in California. Such a request, which shall

include the information requested in this decision, should be mailed to the CPUC, Energy Division-ESP Registration, 505 Van Ness Avenue, San Francisco, California 94102.

- f) A list of the registered ESP providers, and those ESPs who are not required to register but who request that they be included, shall be made available to the public upon request.
- g) The Director of the Energy Division shall ensure that procedures are designed and put in place to handle the filing of the standard service plan filings and the Section 394.5 notices, and that all registered ESPs are made aware of the filing requirements and deadlines.
- h) Keep the Commission informed of any developing pricing methods, hold any necessary workshops, and recommend whether those pricing methods should be permitted in accordance with Section 394.5(a)(1)(A).
- i) When the electrical corporations no longer administer the low-income assistance programs, the Energy Division shall revise the language in the Appendix C notice, and inform all registered ESPs of the change so that each ESP's notice can be revised.
- j) Should the assigned Commissioners suggest inclusion of additional information on the Section 394.5 notice, the Energy Division shall convey the suggested inclusion to all registered ESPs and prospective ESPs.
- k) The Executive Director, on behalf of the Commission, shall enter into an inter-agency arrangement with the Department of Justice (DOJ) to accommodate staff requests for verification of ESPs' disclosures of past civil or criminal sanctions or penalties or felony convictions pursuant to PU Code ' 394(a)(8). The inter-agency arrangement shall provide for the Commission to submit the completed fingerprint card to the DOJ for the DOJ to conduct a state summary criminal history check, and for the DOJ to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Executive Director shall develop internal safeguards to protect the confidential nature of this material and protect the individuals' privacy.

12. All registered ESPs shall submit the standard service plan form to the Energy Division in accordance with the following schedule:

- a) For the first three years, the standard service plan filings shall be filed at six-month intervals. The first filing shall be made on or before July 1, 1998. The next five filing dates are: January 4, 1999; July 1, 1999; January 4, 2000; July 3, 2000; and January 2, 2001.

- b) After the third year, the standard service plan filings shall be filed on or before January 2, or the first business day thereafter if January 2 falls on a weekend, of each succeeding year.
- i) The Director of the Energy Division shall ensure that after the third year, the procedures for filing the Section 394.5 notice are modified in accordance with this decision, and shall notify all ESPs of the modified filing requirements.
- c) Each ESP shall deliver its standard service plan filing to the Energy Division-ESP Registration, 505 Van Ness Avenue, San Francisco, California 94102.
- d) The failure to file the standard service plan filing by the due date may lead to a suspension and possible revocation of the ESP's registration until such time the filing is made.

13. All registered ESPs shall ensure that any person or entity performing marketing functions on the ESP's behalf adhere to the three requirements set forth in Section IV.A.

14. The assigned Administrative Law Judge shall issue a ruling notifying all ESPs who have registered with the Commission of their obligation to abide by the rules set forth in this decision and that they are required to supplement their registration information.

15. This decision has proposed standards for proof of financial viability and proof of technical and operational ability as required by Public Utilities Code Section 394(a). Any interested person who wants to comment on the proposed standards shall file and serve their opening comments in the Docket Office within 20 days from today. Interested persons may file and serve comments in reply to the opening comments within 35 days from today.

- a) If the Commission adopts permanent standards which differ from the interim standards, all ESPs may be required to provide additional proof of financial viability and technical and operational ability.
- b) Opening and reply comments regarding the proposal to have the Office of Ratepayer Advocates (ORA) establish and maintain a matrix of competing service offerings shall be filed in accordance with the above schedule.

- c) Opening and reply comments regarding the proposal to have the UDCs establish a database or record of calls to their customer service centers regarding complaints against ESPs shall be filed in accordance with the above schedule.

16. Each prospective ESP seeking to register as an ESP shall abide by all applicable interim standards, as well as all applicable statutes and Commission decisions relating to the offering of electrical services to residential and small commercial customers.

17. All ESPs registered with the Commission shall be required to pay the annual fee set forth in Public Utilities Code Section 394.3.

- a) The Executive Director is directed to have the staff determine on an annual basis the cost of administering the ESP registration program and other facets of consumer protection pursuant to Public Utilities Code Section 394.3.
- i) The staff shall be responsible for preparing a report on an annual basis starting on July 1, 1998, and shall prepare a resolution setting forth the charge that will be imposed on all registered ESPs no later than September 1, 1998, and on September 1 of each subsequent year.

18. The CSD is directed to do the following:

- a) The Director of CSD shall ensure that the CSD staff, in conjunction with the Executive Director and the ALJ Division, develop the procedures required by Section 394.25 and this decision.
- b) CSD, in conjunction with the Docket Office, the Information Resources Branch, and the Energy Division, shall develop and prepare for the Commission a report of the number of Section 394.2 customer complaints and investigations against both registered ESPs and non-registered ESPs.
 - i) This report shall be prepared on a quarterly basis beginning July 15, 1998. The first report shall cover the start of direct access to the end of June 1998. Quarterly reports shall be prepared for October 15, 1998, January 15, 1999, April 15, 1999, and July 1, 1999, and shall address the activity in the preceding three month quarter for each report. After that, the reports shall be prepared on a semi-annual basis beginning with the report due on January 18, 2000.

- ii) The number of customer complaints and the number of investigations pertaining to ESPs shall be made available to the public upon request, including access through the Commission's Internet site.
 - (A) The CSD shall ensure that the exact number of customers served by each ESP shall not be disclosed to the public. Instead, the number of customer complaints against any particular ESP shall be expressed as a percentage of the number of customers who have filed complaints. If there are any investigations regarding an ESP, the number of investigations shall be provided.
- iii) CSD shall ensure that copies of these reports are forwarded to the Legislature by the Commission.
- c) The CSD, in conjunction with the Energy Division, and the Information Resources Branch, shall develop procedures and systems to establish, update, and distribute the opt-out list.
 - i) The staff shall look into the feasibility of providing a secure, on-line database for the opt-out list, and a report on the feasibility of such a project shall be delivered to the Commission within 90 days from today.
 - (A) In the interim, the staff shall provide the opt-out list on computer disks or CD-ROMs, and shall require that anyone receiving a copy to sign an agreement that the list shall only be used to ensure that those customers on the list will not be marketed to by telephone, and that any other use, sale, release, or disclosure of any of the information is prohibited.
 - (B) Interested parties may submit a letter describing their concerns or solutions regarding the provisioning of an on-line database. Such letters shall be mailed to the following no later than April 27, 1998: Consumer Services Division-Data Access, 505 Van Ness Avenue, 2nd Floor, San Francisco, California, 94102.
 - ii) The opt-out list shall only contain the customer's name, telephone number, the name of the street, and the city. The list shall not include the residence number.
- d) CSD and the ALJ Division shall develop the necessary procedures to route and reject incoming complaints that involve non-registered ESPs marketing to residential and small commercial customers, and complaints

involving those ESPs who market to the larger commercial and industrial customers.

- i) Although the Commission has no jurisdiction over these types of complaints, CSD may recommend that an investigation be opened if a pattern of customer abuses is suspected, or that the Commission should pursue civil or criminal actions against the entity being complained of.
- e) The Director of the CSD and his staff shall develop ways in which consumer advisories and public alerts can be used to inform consumers about their rights and possible problems in the restructured electricity market, and how the Commission can use its Internet site to deliver this kind of information .

19. The Director of the ORA is directed to establish the necessary procedures to carry out the requirements of Section 392.1(c).

- a) ORA shall prepare a report to the Commission with its recommendations for preparing easily understood information guides or other tools to help consumers evaluate the various electric service options.
- b) ORA's report shall be submitted to the Commission no later than October 16, 1998. ORA may submit an earlier report if ORA's Director believes it is necessary.
- c) ORA's report shall, in addition to its recommendations, address the other topics mentioned in the decision.

20. Those ESPs, public agencies, electrical corporations and energy efficiency providers who are interested in purchasing the opt-in database should submit a letter to the attention of: Energy Division-Opt-In List, 505 Van Ness Avenue, 4th Floor, San Francisco, CA 94102.

- a) The letter should be mailed no later than 20 days from today's date, and should indicate how much they would be willing to pay for such a list.
- b) The Energy Division shall be responsible for reviewing and compiling the responses, and to make a recommendation to the assigned Commissioners whether the opt-in database should be pursued.
- c) The assigned Commissioners are delegated the responsibility to decide whether or not to proceed with the opt-in database.

- i) If the assigned Commissioners decide to proceed with the design and implementation of the opt-in database, the Energy Division is directed to perform any of the work necessary to create, solicit, and distribute the database.

21. All of the utility distribution companies are ordered to:

- a) Cooperate with the ESPs to ensure that all of the UDC's charges are accurately reflected or estimated on the Section 394.5 notice.
- b) Correct their direct access tariff regarding a customer's right to cancel a contract until midnight of the third business day, and conform their direct access tariff to the provisions in Section 394.2(d) as discussed in Section VII.B of this decision.
- c) Explore ways in which the Customer Education Program, in the time remaining, can incorporate the consumer protection safeguards as part of its information dissemination.

22. The Director of the Energy Division and the Chief ALJ shall recommend a procedure to address an informal process to handle complaints against registered ESPs involving their rates, terms, and conditions of service.

- a) The recommendation shall be forwarded to the Commission within 90 days from today and may include a proposed resolution establishing an informal resolution process for Section 394.2(a) complaints.

23. The Chief ALJ shall ensure that the procedures associated with the Section 394.25 process be developed, and reflected, as appropriate, in the Rules of Practice and Procedure.

24. Interested parties may file comments on how prices can be expressed in the Section 394.5 notice so that consumers can compare service offerings, while ensuring that such notices protect consumers from misleading offers. Opening comments shall

be filed in the Docket Office and served within 60 days from today. Any responses to the opening comments shall be filed within 80 days from today.

This order is effective today.

Dated March 26, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Appendix B

INFORMATION REGARDING STANDARD SERVICE PLANS

1. _____
(Name of registered ESP) (ESP registration #)

(Street address)

(City) (State) (Zip Code)

(Area Code) (Telephone Number)

2. Is this the first time you have filled out this form? _____
(Yes) (No)

If your answer is yes, answer the remaining line items.

If your answer is no, have there been any changes to this form since the last filing?

(Yes) (No)

If your answer to the last question is no, then you may read, date and sign the declaration at the end of this form and file the form with the Energy Division by the due date.

If your answer to the last question is yes, answer the applicable line items where a change has been made, complete the declaration and file the form with the Energy Division.

3. Do you offer your electric customers a standard service plan? _____
(Yes) (No)

4. If you answered no to line item 3, describe in detail the type of service offerings that your company makes to each electric customer. (Attach additional pages if necessary.) Attach to this filing copies of all printed marketing materials describing such service offerings that are distributed to potential customers in the normal course of business, as well as any written materials that accompany the marketing materials.

5. If you answered yes to line item 3, how many different standard service plans are offered to your customers? Provide a summary of each kind of service plan that is provided, i.e., describe the terms and conditions for receiving service. (Attach additional pages if necessary.) Attach to this filing copies of all printed marketing materials describing each of the standard service plans that are distributed to potential customers in the normal course of business, as well as any written materials that accompany the marketing materials.

6. Attach to this filing all copies of the notice required by Public Utilities Code Section 394.5 that were used during the filing period, as well as any notices that were distributed to customers during the filing period that describe any change in the rates, terms or conditions of service. If the notices do not describe the time period in which the notices became effective, annotate the notices or describe in a separate attachment the time period in which the Section 394.5 notice was used and the effective date of any change notice.

7. List the exact number of customers served by your company as of the date of this filing.

- a. Total number of residential customers served.

- b. Total number of small commercial customers served.

- c. Total number of other customers served.

- d. Total number of customers served.

8. List the average number of kilowatt-hours served per month during the past six months for each customer group.

- a. Residential customers

- b. Small commercial customers

DECLARATION

(If this form is verified outside of California, this declaration must be made by an affidavit sworn or affirmed before a notary public.)

I, (print name and title) _____ declare under penalty of perjury under the laws of the State of California that the above statements are true and correct, and that I have enclosed true and correct copies of all required documents.

Dated this _____ day of _____, _____ at _____.
(day) (month) (year) (place of execution)

Signature: _____

(END OF APPENDIX B)

Appendix C

Notice Of Price, Terms, And Conditions Of Service

Public Utilities Code Section 394.5 requires that each registered electric service provider (ESP) offering electrical service to residential and small commercial customers provide the potential customer with this notice prior to the commencement of service. This notice describes the price, terms and conditions of service that will apply to you, if you decide to purchase electricity from us.

[name of company] is a registered ESP. Our ESP registration number is [ESP registration number]. Our address is [provide mailing address.] Our telephone number is [provide area code and telephone number.]

Summary

This notice contains important information regarding the price, terms and conditions of service with our company. This summary describes some of the more important points covered in this notice. You should, however, read the entire notice so that you understand all of the price, terms and conditions which apply to you.

Your total price of electricity is _____ cents per kilowatt hour. [or if the ESP's price is pegged to the PX price, describe the pricing arrangement.]

If you choose our company to be your ESP, you agree to let us be your electricity provider ["on a month to month basis"; "for a period of _____ months"; or "for a period of _____ year." Should you decide to terminate this arrangement earlier, you will have to pay an early termination fee or penalty of _____.

You have the right to cancel any contract for electric service until midnight of the third business day after the day you signed the contract, or if no contract is signed, from the date that your agreement to switch was verified.

Your Right To Choose

You have the right to choose who you want to purchase your electricity from. If you select an ESP to supply you with electricity, your existing electric utility will still be responsible for ensuring that the electricity is transported to your residence or business.

If you meet certain income criteria, you may be eligible for the California Alternate Rates for Energy (CARE) program or for energy efficiency services. The CARE program provides qualifying households with a discounted rate for energy. Income-eligible households may also qualify for no-cost weatherization or other energy efficiency services. At the present time, these programs are administered by the electric

utility. You should contact the electric utility in your area if you have any questions regarding your eligibility to participate in those programs.

In selecting an ESP, you should be aware that some ESPs may require you to enter into a contract for a fixed period of time rather than on an at-will basis. If you enter into a contract for a fixed period of time, and you decide to switch before the contract term is up, you may be obligated to pay certain fees or penalties for early termination of the contract. [if the ESP has early termination fees or penalties, you should include the following sentence: "Our early termination fees and penalties are explained below in the Terms And Conditions of Service."]

Should any provider of electricity refuse to provide any electricity-related services to you, you have the right to request, within thirty days from the date service was denied, that the provider send you a written explanation of why it denied you service.

Disclosure Of Electricity Source

Public Utilities Code Section 398.4 requires that every provider of electricity offering to sell electricity to customers shall disclose the provider's source of electricity. As an electricity customer, you will receive a quarterly statement from your retail supplier which discloses the projected sources for the calendar year, and an annual statement disclosing the actual electricity sources for the previous year.

Verification That You Want A New Provider Of Electricity

If you decide to purchase your electricity from someone other than your current provider of electricity, the law requires the new ESP or the electric utility to verify that you agree to the change in your provider. This verification can take place in several ways.

If you are a residential customer and you are contacted by the new provider, and you agree to switch to that new provider of electricity, the new provider is required to connect you to a "third-party verification company," or to have the third-party verification company call you, to confirm that you agree to switch to the new provider. The third-party verification company may ask you for certain identifying information such as your name, your address, your current electric provider and account number, and whether you agree to the switch to the new provider that you have selected. You should be careful not to disclose any more information than necessary to confirm the switch. The third-party verification company can use the information that you provide only to confirm that you agree to the switch in provider. Any unauthorized release of the information you supplied to the third-party verification company is grounds for a civil lawsuit. You may also request the third-party verification company for a copy of the record that confirms you have agreed to switch to the new provider of your choice.

If you are a residential customer and you directly call the provider of electricity that you want to switch to, your new provider of electricity is not required to use the third-party verification process described above. Instead, your contact with the new provider is sufficient to confirm that you agree to switch to the company that you called.

If you are a small commercial customer, the new provider of electricity must confirm your agreement to switch to the new provider in one of four ways. First, the new provider can use the third-party verification process described above. The second method is for the new provider to mail you an information package regarding your agreement to switch, and you return the written confirmation. The third method is that the new provider may have you sign a document which explains to you the effect of the change to the new provider. And the fourth method is for the new provider to obtain your consent through electronic means, such as e-mail or a facsimile authorization consenting to the switch to the new provider.

Your Total Price Of Electricity

[If pricing on a cents-per-kWh basis]

Your total price of electricity is _____ cents per kilowatt hour (kWh). This price is based on our anticipated electricity costs and all recurring charges.

Our recurring charges are for the following kinds of charges:

| | |
|---|---|
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |

You will also pay recurring charges for services provided by the electric utility and for legislatively mandated charges. These charges are as follows:

| | |
|---|---|
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |

You may also have to pay the following non-recurring charges:

| | |
|--|---|
| <u>[description and source of each non-recurring charge]</u> | <u>[amount of the non-recurring charge]</u> |
| <u>[description and source of each non-recurring charge]</u> | <u>[amount of the non-recurring charge]</u> |

The following tables provide you with an estimate of your monthly electricity bill based on the total price of electricity and your estimated monthly usage.

Residential Customer

| <u>Monthly kWh Usage</u> | <u>Estimated Monthly Bill</u> |
|--------------------------|-------------------------------|
| 0 | [insert applicable amount] |
| 50 | [insert applicable amount] |
| 100 | [insert applicable amount] |
| 200 | [insert applicable amount] |
| 300 | [insert applicable amount] |
| 400 | [insert applicable amount] |
| 500 | [insert applicable amount] |
| 750 | [insert applicable amount] |
| 1000 | [insert applicable amount] |
| 1500 | [insert applicable amount] |
| 2000 | [insert applicable amount] |

Small Commercial Customer

| <u>Monthly kWh Usage</u> | <u>Estimated Monthly Bill</u> |
|--------------------------|-------------------------------|
| 0 | [insert applicable amount] |
| 500 | [insert applicable amount] |
| 750 | [insert applicable amount] |
| 1000 | [insert applicable amount] |
| 2500 | [insert applicable amount] |
| 5000 | [insert applicable amount] |
| 7500 | [insert applicable amount] |
| 10,000 | [insert applicable amount] |

[If pricing is on a PX minus or PX plus pricing basis, describe the pricing and include the materials below.]

Our recurring charges are for the following kinds of charges:

| | |
|---|---|
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |

You will also pay recurring charges for services provided by the electric utility and for legislatively mandated charges. These charges are as follows:

| | |
|---|---|
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |
| <u>[description of each recurring charge]</u> | <u>[amount of the recurring charge]</u> |

You may also have to pay the following non-recurring charges:

[description and source of each non-recurring charge] [amount of the non-recurring charge]

[description and source of each non-recurring charge] [amount of the non-recurring charge]

The following tables provide you with an estimate of your monthly electricity bill based on the total price of electricity and your estimated monthly usage.

Residential Customer

| <u>Monthly kWh Usage</u> | <u>Estimated Monthly Bill</u> |
|--------------------------|-------------------------------|
| 0 | [insert applicable amount] |
| 50 | [insert applicable amount] |
| 100 | [insert applicable amount] |
| 200 | [insert applicable amount] |
| 300 | [insert applicable amount] |
| 400 | [insert applicable amount] |
| 500 | [insert applicable amount] |
| 750 | [insert applicable amount] |
| 1000 | [insert applicable amount] |
| 1500 | [insert applicable amount] |
| 2000 | [insert applicable amount] |

Small Commercial Customer

| <u>Monthly kWh Usage</u> | <u>Estimated Monthly Bill</u> |
|--------------------------|-------------------------------|
| 0 | [insert applicable amount] |
| 500 | [insert applicable amount] |
| 750 | [insert applicable amount] |
| 1000 | [insert applicable amount] |
| 2500 | [insert applicable amount] |
| 5000 | [insert applicable amount] |
| 7500 | [insert applicable amount] |
| 10,000 | [insert applicable amount] |

Description Of Legislatively Mandated Charges

Included among the recurring charges are amounts for the competition transition charge (CTC), nuclear decommissioning costs, Trust Transfer Amounts (TTA), and public purpose program costs. Pursuant to the legislative enactments regarding electric restructuring, these four charges are to be paid by all consumers of electricity unless exempted by statute. These charges will appear on the electric utility's charges. If you choose to remain with your current electric utility, or you select a different electric service provider, you will remain obligated to pay these four charges.

The CTC is the charge which allows the electric utility to recover its investments in electric generating facilities and associated obligations as a result of the restructuring of the electric industry. The nuclear decommissioning costs are the costs of safely removing nuclear generating facilities from service when the facility is retired. The TTA is the charge to recover the financing cost that was used to reduce electricity rates by 10 percent in 1998. All residential and small commercial customers receive the 10 percent rate reduction regardless of whether the customer's electricity provider is the electric utility or a registered ESP. The public purpose program costs are the costs of programs to enhance the reliability of the electricity system; provide energy efficiency and conservation activities; develop research, development and demonstration projects; operate and develop renewable energy sources; and provide electricity to low-income customers under the CARE program.

Description Of Terms And Conditions Of Service

[describe all of the terms and conditions of service related to the sale of electricity to residential and small commercial customers. this should describe who will perform the metering and who will be billing the customer.]

[explain all financial obligations the customer will face in connection with a customer's purchase of electricity or other electricity-related products or services from the ESP, as well as all financial obligations associated with terminating service.]

If an advance deposit is required, the law provides that the deposit cannot be more than your estimated bill for a three-month period.

[use the provision applicable to your situation: (1) You, the customer, will receive a single bill from us for all of the electric utility's charges and for our charges. Should you owe any past due amount on your bill, we are responsible for collecting that past due amount from you. If you fail to pay any past due amount, we may transfer your electric service back to the electric utility, who may then disconnect your electric service. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee to the electric utility. (2) Although you, the customer, will be purchasing electricity from us, we will arrange to have the electric utility send you a single bill for the electric utility's charges and for our charges. Should you owe any past due amount on your bill, the electric utility is responsible for collecting any past due amount from you. If you fail to pay any past due amount owed to the electric utility, the electric utility may then disconnect your service. If you fail to pay any past due amount owed to us, we may transfer your electric service back to the electric utility, who may then disconnect your electric service. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee to the electric utility. (3) You, the customer, will be

receiving a separate bill from the electric utility for its charges, and a separate bill from us for our charges. Should you owe any past due amount on the electric utility's bill, the electric utility is responsible for collecting any past due amount from you. Should you owe any past due amount on our bill, we are responsible for collecting any past due amount from you. If you fail to pay any past due amount owed to the electric utility, the electric utility may then disconnect your service. If you fail to pay any past due amount owed to us, we may transfer your electric service back to the electric utility, who may then disconnect your electric service. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee to the electric utility.]

Complaint Procedures

Different complaint procedures apply depending upon whom you have a dispute with. If you have a billing-related dispute concerning the electric utility's charges, or a dispute regarding the manner in which the electricity is distributed to your residence, a complaint may be filed with the California Public Utilities Commission (CPUC) if you meet the conditions set forth in Rule 9 of the CPUC's Rules of Practice and Procedure.

If you have a billing-related or service-related dispute with us, the ESP, you may complain to the CPUC. The CPUC shall then attempt to informally resolve your complaint. However, if you have a dispute against us which does not relate to the rates, charges, or terms and conditions of service, you have the right to file a complaint with the CPUC or file a complaint against us in civil court.

If you file or submit a complaint with the CPUC against an electric utility or an ESP, your electric service cannot be disconnected if you deposit the disputed amount with the CPUC in an escrow account.

If you have any questions regarding the CPUC complaint procedures, you may contact the Consumer Affairs Branch (CAB) of the CPUC. The CAB may be reached at 1-800 649-7570.

Other Services

We also offer [describe the other service offered.] The following is a description of each of the services offered, and the charge or charges associated with each service.

| | |
|--------------------------------------|----------------------------------|
| <u>[description of each service]</u> | <u>[amount of the charge(s)]</u> |
| <u>[description of each service]</u> | <u>[amount of the charge(s)]</u> |

Notice Of Your Right To Cancel

You have the right to cancel any contract for electric service until midnight of the third business day after the day you signed the contract, or if no contract is signed, from the date that your agreement to switch was verified. You must give us, at the address specified on page 1 of this notice, written notice of your desire to cancel. No fee or penalty may be imposed against you for exercising your right to cancel within this time period. (Public Utilities Code Section 395.)

(END OF APPENDIX C)

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